

EXHIBIT 44

(Part 2)

170B. FEDERAL COURTS**XVII. COURTS OF APPEALS.(Cont'd)**

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XVII. COURTS OF APPEALS.(Cont'd)

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XVII. COURTS OF APPEALS.(Cont'd)

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- 3842. Composition of court, powers, and procedure.

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- 3861. In general.
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- 3863. Constitutional rights, civil rights, and discrimination in general.
- 3864. Torts in general.
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XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.(Cont'd)

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- 3870. Water.
- 3871. Governments and political subdivisions.
- 3872. — In general.
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- 3874. — Controversies between two or more states.
- 3875. — Ambassadors, other public ministers, consuls, or vice consuls of foreign states.
- 3876. — Suits between United States and a state.
- 3877. — Actions or proceedings by a state against citizens of another state or against aliens.
- 3878. — Public records or information.
- 3879. Government property, facilities, and funds.
- 3880. — In general.
- 3881. — Postal matters.
- 3882. Social Security, public assistance, and other government payments.
- 3883. Taxation.
- 3884. — In general.
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- 3887. — In general.
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- 3889. — Employment discrimination.
- 3890. Education.
- 3891. Elections, voting, and political rights.
- 3892. War, national emergency, and national security.
- 3893. — In general.
- 3894. — Armed services.
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- 3897. Contracts.
- 3898. — In general.
- 3899. — Public contracts.
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171. FENCES**XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.(Cont'd)**

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- 3903. — Insurance.
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- 3905. — Mining.
- 3906. Intellectual property.
- 3907. Environment and health.
- 3908. — In general.
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- 3910. Carriers and public utilities.
- 3911. — In general.
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- 3914. — Telecommunications.
- 3915. Aliens, immigration, and citizenship.
- 3916. Indians and Indian lands.

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- 3937. — Torts in general.
- 3938. — Property.
 - (1). In general.
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 - (3). In rem and quasi in rem proceedings.
- 3939. — Taxation.
- 3940. — Labor and employment.
- 3941. — Contracts.
 - (1). In general.
 - (2). Public contracts.
- 3942. — Trade, business, and finance.
- 3943. — Intellectual property.
- 3944. — Environment and health.
- 3945. — Telecommunications.
- 3946. Court of Federal Claims cases.
- 3947. — In general.
- 3948. — Contracts.
- 3949. — Torts in general.
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XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.(Cont'd)

- 3951. — Labor and employment.
- 3952. — Armed services; veterans.
- 3953. — Taxation.
- 3954. — Indians.
- 3955. Injunction against proceedings.
- 3956. — In general.
- 3957. — Particular cases, contexts, and questions.
- 3958. Review of decisions by another federal court in a prior action.

(D) TRANSFER AND CERTIFICATION OF CASES.

- 3971. In general; transfer between divisions.
- 3972. Administrative agency cases.
- 3973. Other particular cases, contexts, and questions.

171. FENCES**SUBJECTS INCLUDED**

- Structures for inclosing lands in general
- Statutory provisions relating thereto
- Rights, duties and liabilities of proprietors or occupants of land in respect of such structures
- Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Adjoining landowners' reciprocal rights and duties generally, see **ADJOINING LANDOWNERS**
- Boundaries, fences as indicating, see **BOUNDARIES**
- Excavations or dangerous premises or machinery, fencing of, see **LABOR AND EMPLOYMENT, MINES AND MINERALS, NEGLIGENCE**
- Railroads, fencing, see **RAILROADS**
- 1. Duty to erect and maintain in general.
- 2. Statutory provisions.
- 3. — In general.

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4. — County and district fence laws.
5. Rights and duty to erect and maintain partition fences.
6. — In general.
7. — Statutory provisions.
8. — Rights acquired by prescription.
9. — Agreements of landowners.
10. — Persons liable.
11. Division of partition fence between landowners.
12. — In general.
13. — Appointment and proceedings of fence viewers.
14. Proceedings to compel erection of partition fence or contribution.
15. — In general.
16. — View and assessment by fence viewers.
17. Failure to erect or maintain partition fence.
18. Location.
19. Construction, material, and sufficiency.
20. Ownership.
- 20.1. — In general.
21. — Partition fences.
22. Injuries caused by fences.
23. — In general.
24. — Personal injuries.
25. — Domestic animals.
26. Removal or destruction of fences.
- 26.1. — In general.
27. — Civil liability.
28. — Criminal responsibility.
 - (.5). In general.
 - (1). Nature and elements of offense.
 - (2). Indictment or information.
 - (3). Evidence.
 - (4). Trial.
29. Fencing lands of another.

172. FERRIES**SUBJECTS INCLUDED**

Establishment, maintenance, regulation and use of ferries for passage of the public over inland waters, subject to payment of tolls

Organization, franchises and powers of ferry companies

Rights, duties and liabilities of individuals or corporations exercising ferry franchises, in their capacities as carriers as well as otherwise

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations, matters applicable to in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power of, see EMINENT DOMAIN

Municipalities' powers to grant and regulate ferry franchises, see MUNICIPAL CORPORATIONS

Obstruction of navigation, see WATER LAW

Taxation of ferries, see TAXATION

I. ESTABLISHMENT AND MAINTENANCE, ¶1–26.

II. REGULATION AND OPERATION, ¶27–35.

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1. Right to establish and maintain in general.
2. What constitutes a ferry.
3. Character of ferry as highway.
4. Constitutional and statutory provisions.
5. Establishment by public authorities.
6. Ferry companies.
- 6.1. — In general.
7. — Corporate powers and liabilities.
8. — Actions.
9. Franchises and privileges.
- 9.1. — In general.
10. — Nature of franchise.
11. — Power to grant.
12. — Persons who may acquire.
13. — Prescription.
14. — Proceedings to acquire.
15. — Grant or sale or lease by public authority.
16. — Extent and exclusiveness of franchise.
17. — Right of landing and embarking.
18. — Transfer.
19. — Infringement or disturbance.
20. — Termination and renewal.

172H. FINANCE, BANKING, AND CREDIT

I. ESTABLISHMENT AND
MAINTENANCE.(Cont'd)

- 21. Location.
- 22. Landings and other interests in land.
- 23. Construction and maintenance of boats, buildings, and works.
- 24. Sale and transfer of ferry.
- 25. Injuries to ferry property.
- 26. Offenses.

II. REGULATION AND OPERATION.

- 27. Power to control and regulate.
- 28. Duty to operate and transport.
- 29. Statutory and municipal regulations.
- 30. Licenses and taxes.
- 30.5. Bonds.
- 31. Tolls or fares.
- 32. Injuries incident to operation.
- 33. Actions for injuries.
- 34. Penalties for violations of regulations.
- 35. Offenses incident to operation.

172H. FINANCE, BANKING,
AND CREDIT

SUBJECTS INCLUDED

- Regulation and conduct of the business of finance, banking, receiving and repaying deposits and collections, lending money, extending credit, dealing in money, and collecting debts
- Depository and financial institutions of all kinds, including ordinary banks of deposit, discount, and circulation, savings banks, co-operative banks, loan companies, trust companies, investment companies, savings and loan associations, building and loan associations, thrifts, credit unions, industrial banks and industrial loan companies, and "Morris Plan" banks
- Organization, powers, and liabilities of such entities, and the rights and liabilities of their shareholders, members, directors, officers, employees, and agents
- Rights, duties, and liabilities of bankers, banks, and similar institutions, and of those dealing with them

- Clearing houses
- Federal Reserve, Farm Credit, and Home Loan Bank Systems
- Federal deposit insurance
- Bank holding companies and the regulation thereof
- Pawnbrokers and pawnshops, including their regulation and the rights, duties, and liabilities of persons engaged in such business and of those dealing with them
- Credit cards, including their regulation and the rights, duties, and liabilities of issuers and holders
- Regulation and conduct of the business of procuring and furnishing information as to pecuniary condition, credit, and character, as well as the rights, duties, and liabilities of those engaged therein, their agents and employees, and their subscribers or customers
- Regulation of consumer finance and credit, particularly under the Truth in Lending Act, Regulation Z, the Real Estate Settlement Practices Act, the Federal Trade Commission holder and credit practices rules, the Consumer Leasing Act, the Fair Credit Billing Act, the Credit Repair Organizations Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Electronic Funds Transfer Act
- Regulation of financial records and privacy, particularly under the Gramm-Leach-Bliley Act and the Right to Financial Privacy Act
- Bank fraud and other offenses concerning finance, banking, and credit

SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS

- Access device theft or fraud, see FALSE PRETENSES V
- Bank Secrecy Act, see CURRENCY REGULATION
- Checks in hands of third persons, see COMMERCIAL PAPER
- Commercial paper, see COMMERCIAL PAPER
- Consumer fraud and protection statutes and regulations of general application, see ANTITRUST AND TRADE REGULATION III

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Contracts of pledge, and the rights, duties, and obligations arising therefrom, see PLEDGES

Contracts to lend money, and the rights, duties, and obligations arising therefrom, see COMMERCIAL PAPER, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS

Corporations or unincorporated associations in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Counterfeiting bank notes, see COUNTERFEITING

Credit card theft or fraud, see FALSE PRETENSES V

Currency reporting and regulation, see CURRENCY REGULATION

Federal Reserve notes, see CURRENCY REGULATION

Identity theft or fraud, see FALSE PRETENSES V

Interest laws of general application, see INTEREST and USURY

Investment banking, see BROKERS, EXCHANGES, and SECURITIES REGULATION

Money and legal currency, establishment and regulation of, see CURRENCY REGULATION

Money laundering, see CURRENCY REGULATION

Negotiable instruments, see COMMERCIAL PAPER

Securities regulation, see SECURITIES REGULATION

Security interests created in connection with consumer loans, and the rights and obligations of parties arising therefrom, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, and SECURED TRANSACTIONS

Slander or libel, liabilities for, see LIBEL AND SLANDER

Taxation of capital stock or property of banks, see TAXATION

Unfair and deceptive trade practices statutes and regulations of general application, see ANTITRUST AND TRADE REGULATION III

Usury laws of general application, see USURY

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(B) PARTICULAR BUSINESSES AND PRACTICES, ¶51–110.

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1. IN GENERAL, ¶311–330.

2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES, ¶331–340.

(E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶341–430.

1. IN GENERAL; RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶341–360.

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IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS—Cont'd

(E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

—Cont'd

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172H. FINANCE, BANKING, AND CREDIT**XIII. PAWNBROKERS AND PAWN-SHOPS, ☞1241–1260.****XIV. CREDIT CARDS, ☞1261–1300.****XV. CREDIT REPORTING, ☞1301–1320.****XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT, ☞1321–1690.****(A) IN GENERAL, ☞1321–1340.****(B) DISCLOSURE REQUIREMENTS IN GENERAL, ☞1341–1360.****(C) MORTGAGE AND RESIDENTIAL LENDING; REAL ESTATE SETTLEMENT PRACTICES, ☞1361–1390.****1. IN GENERAL, ☞1361–1380.****2. SERVICING, ☞1381–1390.****(D) LEASES AND RENTAL AGREEMENTS, ☞1391–1400.****(E) CREDIT BILLING, ☞1401–1410.****(F) CREDIT REPAIR AND COUNSELING, ☞1411–1420.****(G) CREDIT REPORTING, ☞1421–1440.****(H) CREDIT DISCRIMINATION; EQUAL CREDIT OPPORTUNITY, ☞1441–1470.****(I) DEBT COLLECTION PRACTICES, ☞1471–1500.****(J) ELECTRONIC FUNDS TRANSFERS, ☞1501–1520.****(K) ENFORCEMENT, REMEDIES, AND PROCEEDINGS, ☞1521–1690.****1. IN GENERAL, ☞1521–1550.****2. EFFECT OF VIOLATION ON ENFORCEABILITY OF TRANSACTION, ☞1551–1570.****3. ADMINISTRATIVE AGENCIES AND PROCEEDINGS, ☞1571–1580.****4. ACTIONS, ☞1581–1620.****5. EVIDENCE, ☞1621–1640.****6. MONETARY RELIEF; DAMAGES, ☞1641–1660.****7. INJUNCTIVE RELIEF, ☞1661–1680.****8. COSTS AND FEES, ☞1681–1690.****XVII. FINANCIAL RECORDS AND PRIVACY, ☞1691–1710.****(A) IN GENERAL, ☞1691–1700.****(B) ENFORCEMENT, REMEDIES, AND PROCEEDINGS, ☞1701–1710.****XVIII. OFFENSES, ☞1711–1741.****(A) IN GENERAL, ☞1711–1730.****(B) PROSECUTIONS, ☞1731–1741.****I. IN GENERAL.****1. In general.****2. What law governs.**

State or federal law as rules of decision in federal court, see FEDERAL COURTS XV.

3. — In general.**4. — Loans, lending, and credit; interest.****5. — Letters of credit.****6. — Credit cards.****7. Relation between state and federal law; preemption.**

Preemption, see also STATES I(B).

8. — In general.**9. — Banking, banks, and financial institutions in general.****10. — Directors, officers, employees, and agents.****11. — Deposits and accounts.****12. — Collection and payment of checks and similar items.****13. — Funds transfers.****14. — Fees, charges, and set-offs.****15. — Loans, lending, and credit; interest.****(1). In general.****(2). Disclosure requirements in general.****(3). Mortgage and residential lending.****16. — Dealings in exchange, money, securities, and investments.****17. — Failed or failing institutions, winding up, and closure.****18. — Credit cards.****19. — Credit reporting.****20. — Debt collection practices.****21. — Financial records and privacy.****22. — Offenses and prosecutions.****II. RELATION BETWEEN LENDER AND BORROWER IN GENERAL.****31. In general.****32. Duty of care in general; torts in general.****33. Particular duties and torts.****34. Duty of good faith and fair dealing.****35. Fiduciary duties.****36. Actions and proceedings.****III. CONTROL AND REGULATION IN GENERAL.****(A) IN GENERAL.****41. In general.**

172H. FINANCE, BANKING, AND CREDIT**III. CONTROL AND REGULATION
IN GENERAL.**(Cont'd)

- 42. Lenders and loans in general.
- 43. Authority or license to do business in general.

(B) PARTICULAR BUSINESSES AND PRACTICES.**1. IN GENERAL.**

- 51. In general.
- 52. Small lenders and loans in general.
- 53. Consumer lending and credit in general.
- 54. Leases, conditional sales, and installment transactions in general.
- 55. Motor vehicle loans and financing.
- 56. Mortgage and residential lending.
- 57. Loan origination.
- 58. Loan servicing.
- 59. Loan sharking and predatory practices in general.
- 60. Payday lending.
- 61. Check cashing and money transmission services.
- 62. Currency exchange.
- 63. Credit billing.
- 64. Credit repair and counseling.
- 65. Credit discrimination.

**2. REGULATION OF INTEREST,
CHARGES, AND FEES.**

Generally applicable interest and usury laws, see INTEREST, USURY.

- 71. In general.
- 72. Persons and transactions subject to or protected by regulation.
- 73. Rate and amount of interest or finance charge.
- 74. — In general.
- 75. — Computation in general.
- 76. — Unearned interest or finance charge; prepayment and acceleration.
- 77. Incidental charges in general.
- 78. Origination fees, closing costs, and points.
- 79. Document fees.
- 80. Service fees and charges.
- 81. Late fees and default charges.
- 82. Collection fees and costs.
- 83. Insurance charges.

3. DISCLOSURE REQUIREMENTS.

- 91. In general.

**III. CONTROL AND REGULATION
IN GENERAL.**(Cont'd)

- 92. Leases, conditional sales, and installment transactions in general.
- 93. Motor vehicle loans and financing.
- 94. Mortgage and residential lending.

4. DEBT COLLECTION PRACTICES.

- 101. In general.
- 102. Persons and transactions subject to or protected by regulation.
- 103. Practices prohibited or required in general.
- 104. Communications, representations, and notices; debtor's response.
- 105. Litigation conduct.
- 106. Offers to settle or compromise.
- 107. Harassment and abuse.
- 108. Licensing and registration of debt collectors.

**(C) ENFORCEMENT, REMEDIES,
AND PROCEEDINGS.****1. IN GENERAL.**

- 111. In general.
- 112. Effect of violation of regulations or lack of license in general.
- 113. Enforceability of transactions and liabilities incurred; rescission and cancellation.
- 114. — In general.
- 115. — Violations of licensing requirements.
- 116. — Violations of regulations concerning interest, charges, and fees.
- 117. — Violations of disclosure requirements.
- 118. — Assertion of violation as defense to suit on underlying obligation; recoupment and set-off.
- 119. Defenses and safe harbors in general.
- 120. Knowledge and intent; bona fide errors; good-faith defense.
- 121. Persons liable.
- 122. Exclusive and concurrent remedies or laws; conditions precedent; exhaustion.
- 123. Waiver of rights or remedies.

172H. FINANCE, BANKING, AND CREDIT**2. ADMINISTRATIVE AGENCIES
AND PROCEEDINGS.**

- 131. In general.
- 132. Officers and employees.
- 133. Jurisdiction and authority.
- 134. Investigations and examinations.
- 135. Rules and regulations.
- 136. Hearings, adjudications, and orders.
- 137. Administrative review of administrative action.
- 138. Judicial review and enforcement.
- 139. Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE ¶2269.

3. ACTIONS.

- 141. In general.
- 142. Right of action.
- 143. Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 144. Parties; standing.
- 145. Pleading.
- 146. Trial and judgment.

4. EVIDENCE.

- 151. In general; admissibility.
- 152. Presumptions, inferences, and burden of proof.
- 153. Weight and sufficiency.

5. RELIEF.

- 161. In general.
- 162. Monetary relief; damages.
- 163. — In general.
- 164. — Refunds.
- 165. — Enhanced damages; double or treble damages.
- 166. — Punitive or exemplary damages.
- 167. Injunctive relief.
- 168. — In general.
- 169. — Preliminary injunctive relief.
- 170. Proceedings to impose; evidence.

6. COSTS AND FEES.

- 181. In general.
- 182. Proceedings to impose; evidence.

7. PENALTIES.

- 191. In general.
- 192. Proceedings to impose; evidence.

**IV. BANKS AND SIMILAR FINANCIAL
INSTITUTIONS.****(A) IN GENERAL.**

- 201. In general.
- 202. Banks and banking in general.
- 203. Control and regulation in general.
- 204. — In general.
- 205. — Federal control and regulation in general.
- 206. — Authority or license to do business in general.
- 207. Particular entities and businesses.
- 208. — In general.
- 209. — State banks.
- 210. — National banks.
- 211. — Savings banks.
- 212. — Private banks.
- 213. — Savings and loans and related entities.
- 214. — Credit unions.
- 215. Unauthorized or unlicensed banking.
Criminal offenses, see ¶1723.
- 216. — In general.
- 217. — Validity of transactions and liabilities incurred.
- 218. License fees and taxes.
- 219. Capital requirements and limitations on indebtedness.
- 220. Reserves, guaranty funds, and deposits of securities.
- 221. Reports and statements.
- 222. Administrative agencies and proceedings.
Branch banking, see ¶256.
- 223. — In general.
- 224. — Officers and employees.
- 225. — Jurisdiction and authority.
- 226. — Investigations and examinations.
- 227. — Rules and regulations.
- 228. — Hearings, adjudications, and orders.
- 229. — Administrative review of administrative action.
- 230. — Judicial review and enforcement.
- 231. — Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE ¶2269.

172H. FINANCE, BANKING, AND CREDIT**(B) ORGANIZATION AND INCIDENTS
OF EXISTENCE.**

- 241. In general.
- 242. Corporations and incorporation in general.
- 243. Associations and other unincorporated organizations in general.
- 244. Partnerships and joint ventures in general.
- 245. Constitution, by-laws, and rules.
- 246. — In general.
- 247. — Amendment or repeal.
- 248. Charters and legislative acts.
- 249. — In general.
- 250. — Special charters or acts.
- 251. Defective incorporation or organization.
- 252. Term of existence.
- 253. Extension or renewal.
- 254. Name and seal.
- 255. Location and place of business; relocation.
- 256. Branches.
- 257. — In general.
- 258. — Application and proceedings.
- 259. — Judicial review.
- 260. Parent-subsidiary relationships.
Bank holding companies, see X.
- 261. — In general.
- 262. — Divisions.
- 263. Disregarding corporate entity; piercing corporate veil.
See also CORPORATIONS AND BUSINESS ORGANIZATIONS II.
- 264. Evidence of existence.

(C) CAPITAL AND STOCK.**1. IN GENERAL.**

- 271. In general.
- 272. Amount of capital and shares.
- 273. Increase of capital stock.
- 274. Reduction of capital stock.
- 275. — In general.
- 276. — Reverse stock split.
- 277. Subscription to and issue of stock.
- 278. Transfer of stock.
- 279. Profits and dividends.
- 280. Lien of entity on stock or dividends.

**2. SAVINGS AND LOANS, CREDIT UNIONS,
AND RELATED ENTITIES.**

- 281. In general.
- 282. Amount of capital and shares.
- 283. Subscription to and issue of stock.
- 284. — In general.
- 285. — Fraud and misrepresentation.
- 286. Paid-up stock.
- 287. Transfer of shares.
- 288. Dividends.
- 289. Maturity of shares.
- 290. — In general.
- 291. — Power to contract as to time and amount.
- 292. — Effect of by-laws, stock certificates, and contracts in general.
- 293. — Effect of statements or representations in circulars or prospectus.
- 294. Release or surrender of shares.
- 295. Withdrawal of member and redemption of shares.
- 296. — In general.
- 297. — Conditions precedent in general.
- 298. — Existence and amount of redemption fund.
- 299. — Notice.
- 300. — Preferences.
- 301. — Amount to be recovered or paid in general.
- 302. — Allowance of profits or dividends.
- 303. — Deduction of expenses and losses.
- 304. Lien of entity on stock or dividends.

(D) SHAREHOLDERS AND MEMBERS.**1. IN GENERAL.**

- 311. In general.
- 312. Rights, duties, and liabilities as to institution.
- 313. — In general.
- 314. — Meetings.
- 315. — Right to receive fair value.
Shareholder rights and responsibilities as to merger, consolidation, and reorganization, see ¶942.
- 316. — Preemptive rights.
- 317. Liability for debts and acts of institution.
- 318. — In general.
- 319. — When liability accrues, and conditions precedent.
- 320. — Release and discharge.
- 321. — Effect of transfer of stock.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- (1). In general.
- (2). Liability of transferor.
- (3). Liability of transferee.
- 322. Actions and proceedings by or against shareholders or members.
- 323. — In general.
- 324. — Suing or defending on behalf of bank; derivative actions.
 - (1). In general.
 - (2). Pleading requirements.
- 2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES.**
- 331. In general.
- 332. Rights, duties, and liabilities.
- 333. — In general.
- 334. — Meetings.
- 335. Death of shareholder or member.
- 336. Dues, fines, and assessments.
- 337. Actions and proceedings by or against shareholders or members.
- (E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.**
- 1. IN GENERAL; RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.**
- 341. In general.
- 342. Hiring and tenure in general.
- 343. — In general.
- 344. — Election or appointment.
- 345. Discharge or removal.
- 346. Retaliation; whistleblowing.
- 347. Compensation and indemnity.
- 348. Employment contracts.
- 349. Actions by directors, officers, employees, and agents.
- 350. — In general.
- 351. — Time to sue; limitations and laches.

See also LIMITATION OF ACTIONS.
- 352. — Parties; standing.
- 353. — Pleading.
- 354. — Evidence.
- 355. — Trial and judgment.
- 2. POWERS AND FUNCTIONS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.**
- 361. In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 362. Meetings of directors.
- 363. Particular powers and functions.
- 364. — In general.
- 365. — Property transactions.
- 366. — Contracts.
- 367. — Deposits and collections.
- 368. — Loans and discounts.
- 369. — Bills, notes, and securities.
- 370. — Conduct of litigation.
- 3. DUTIES AND LIABILITIES OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.**
- 381. In general.
- 382. Duties and liabilities as to institution and shareholders in general.
- 383. Negligence.
- 384. — In general.
- 385. — Gross negligence.
- 386. Fiduciary duties.
- 387. Conflicts of interest and self-dealing.
- 388. Duties and liabilities as to third parties.
- 389. — In general.
- 390. — Negligence.
- 391. — Fiduciary duties.
- 392. Liabilities for conduct of fellow directors, officers, employees, and agents.
- 393. Actions against directors, officers, employees, and agents.
- 394. — In general; nature and form.
- 395. — Conditions precedent and defenses.
- 396. — Time to sue; limitations and laches.

See also LIMITATION OF ACTIONS.
- 397. — Parties; standing.
- 398. — Pleading.
- 399. — Evidence.
- 400. — Trial and judgment.
- 4. LIABILITIES OF INSTITUTION FOR CONDUCT OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.**
- Actions against institution, see IV(O).*
- 411. In general.
- 412. Principles of agency, vicarious liability, and respondeat superior in general.
- 413. Scope of employment or authority in general.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 414. — In general.
- 415. — Actual or express authority.
- 416. — Apparent or implied authority.
- 417. Particular conduct.
- 418. — In general.
- 419. — Representations or admissions in general.
- 420. — Negligence.
- 421. — Wrongful or intentional acts; misconduct and malfeasance.
 - (1). In general.
 - (2). Loans and discounts.
- 422. — Fraud and misrepresentation.
 - (1). In general.
 - (2). Loans and discounts.
- 423. Estoppel to deny authority.
- 424. Ratification and repudiation.
- 425. Notice to or knowledge of individual; imputation to institution.
- 426. — In general.
- 427. — Particular cases.
- 428. Effect of individual's conflict of interest.
- 429. Negligent hiring, retention, training, or supervision.
- 430. Evidence as to authority.

(F) FOREIGN INSTITUTIONS.

- 431. In general.
- 432. Savings and loans, credit unions, and related entities.
- 433. Actions by or against.

Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see COURTS ¶13.1, FEDERAL COURTS X.

(G) POWERS, FUNCTIONS, AND DEALINGS IN GENERAL.

- 441. In general.
- 442. Particular institutions.
- 443. — In general.
- 444. — State banks in general.
- 445. — National banks in general.
- 446. — Savings banks.
- 447. — Private banks.
- 448. — Savings and loans and related entities.
- 449. — Credit unions.
- 450. Construction of charters and laws.
- 451. Rules of institution.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 452. Customs and usages.
- 453. Agency of institution.
- 454. Acquiring or holding stock.

Dealing in stock, see ¶769. Bank holding companies, see X.
- 455. — In general.
- 456. — Institution's own stock.
- 457. Property and conveyances.
- 458. — In general.
- 459. — Real property.
- 460. Contracts in general.

Loan contracts, see COMMERCIAL PAPER, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS. Credit card contracts, see ¶1269.
- 461. Interest rate swaps.
- 462. Currency handling services.
- 463. Borrowing money.
- 464. — In general.
- 465. — Bonds and debentures.
- 466. Guaranty, suretyship, and indemnity.
- 467. Insurance.
- 468. Torts in general.
- 469. — In general.
- 470. — Duties owed by institutions in general.
- 471. — Negligence in general.
- 472. — Personal injury.
- 473. Effect of acts ultra vires.

(H) RELATION BETWEEN INSTITUTION AND CUSTOMER IN GENERAL.

- 481. In general.
- 482. Duty of care in general; torts in general.
- 483. Duty of good faith and fair dealing.
- 484. Fiduciary duties.

(I) DEPOSITS AND ACCOUNTS.

1. IN GENERAL.

- 491. In general.
- 492. Relation between institution and depositor or account holder in general.
- 493. — In general.
- 494. — Contractual nature in general.
- 495. — Duty of care in general; torts in general.
- 496. — Duty of good faith and fair dealing.
- 497. — Fiduciary duties.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- 498. — Passbooks and statements of account.
- 499. Power and duty to receive deposits.
- 500. Making, receipt, and entry of deposits.
- 501. Title to and disposition of deposits and accounts.
- 502. — In general.
- 503. — Payable-on-death (POD) accounts.
- 504. — Funds of person other than depositor.
- 505. — Conversion.
- 506. Deposits other than money.
- 507. — In general.
- 508. — Checks and drafts on depositor's institution.
- 509. General and special deposits and accounts.
- 510. — In general.
- 511. — Individual retirement accounts.
- 512. Demand deposits.
- 513. — In general.
- 514. — Checking accounts.
- 515. Time or fixed-term deposits.
- 516. — In general.
- 517. — Certificates of deposit.
- 518. Interest on deposits.
- 519. — In general.
- 520. — Demand deposits; checking accounts.
- 521. — Time or fixed-term deposits; certificates of deposit.
- 522. Repayment or return of deposits; withdrawals and disbursements.
- 523. — In general.
- 524. — Mode and time of seeking.
- 525. — Wrongful payments and unauthorized withdrawals.
- 526. Electronic transactions in general.
Wholesale funds transfers, particularly as governed by Article 4A of the Uniform Commercial Code, see IV(K). Fees and charges, see IV(L). Electronic Fund Transfers Act, see XVI(J).

2. JOINT ACCOUNTS.

- 531. In general.
- 532. Nature and incidents in general.
- 533. Creation and existence.
- 534. — In general.
- 535. — Presumptions as to joint accounts.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 536. Severance.
- 537. Termination.
- 538. Survivorship.
- 539. Mutual rights, duties, and liabilities of joint account holders.
- 540. — In general.
- 541. — Conversion.
- 542. — Actions between joint account holders.
- 543. Rights and liabilities of joint account holders as to third persons.
- 544. — In general.
- 545. — Duties as to third persons.
 - (1). In general.
 - (2). Particular cases.
- 546. — Actions by or against joint account holders.

3. FIDUCIARY DEPOSITORS AND CUSTODIAL ACCOUNTS.

- 551. In general.
- 552. Trustees; trust funds and accounts.
- 553. Attorneys; client funds and accounts.
- 554. Public funds and accounts.

4. DISCLOSURE REQUIREMENTS; TRUTH IN SAVINGS.

- 561. In general.
- 562. Enforcement, remedies, and proceedings.

(J) COLLECTION AND PAYMENT OF CHECKS AND SIMILAR ITEMS.

Checks and drafts on depositor's institution, see
 Ⓒ508.

1. IN GENERAL.

- 571. In general.
- 572. Parties involved and their rights, duties, and liabilities in general.
- 573. — In general.
- 574. — Depositary, intermediary, collecting, and presenting banks.
 - (1). In general.
 - (2). Relation to depositor for collection.
 - (3). Title and rights to deposited check or item.
- 575. — Payor/drawee banks.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- 576. — Drawer of check or item.
- 577. — Payee or holder of check or item.
- 578. Making, receipt, and entry of deposit for collection.
- 579. Title to items received for collection.
- 580. Authority and acts in making collection.
- 581. — In general.
- 582. — Power and duty to make collection.
- 583. — What constitutes collection.
- 584. — Effect of customs and usages.
- 585. — Taking things other than money in payment.
- 586. — Rights and liabilities as to proceeds.
 - (1). In general.
 - (2). Insolvency of collecting or other intermediary bank.
 - (3). Insolvency of depository bank.
- 587. — Payment of proceeds.
- 588. — Failure to collect.
- 589. — Failure to fix liability of indorser or drawer.
- 590. Acceptance, payment, and settlement of check or item.
 - Finality, provisional credits, and charge-backs, see IV(J)4.*
- 591. — In general.
- 592. — Time for acceptance, payment, or settlement.
- 593. Drawer's notice not to pay or revocation of check or item; stop-payment orders.
- 594. Bank's refusal to pay; wrongful dishonor.
- 595. Estoppel of bank to resist liability.
- 596. Order of payment and priority between checks.
- 597. Mode and sufficiency of payment.
- 598. Rights of bank making payment.
- 599. — In general.
- 600. — Subrogation.
- 601. Effect of insufficient deposits; overdrafts and check-kiting.
 - Fees and charges, see ¶686. Inter-bank rights and liabilities, see IV(J)3.*
- 602. Notes payable at bank.
- 603. Certified checks or notes.
- 604. Documentary drafts.
- 605. Lost or stolen items.

2. IMPROPER OR IRREGULAR CHECKS OR ITEMS.

- 611. In general.
- 612. Signatures and authorizations in general.
- 613. — In general.
- 614. — Drawer's signature or authorization.
- 615. Indorsement in general.
- 616. — In general.
- 617. — Missing indorsement.
- 618. — Unauthorized indorsement.
- 619. Malfeasance; forgery, alteration, and fraud.
- 620. — In general.
- 621. — Liability of bank to drawer in general.
- 622. — Signatures, authorizations, and indorsements.
- 623. Duties and negligence of drawer.
- 624. — In general.
- 625. — Ratification by drawer.
- 626. — Laches of drawer.
- 627. Right of bank to recover money paid.
- 628. — In general.
- 629. — Recovery from bona fide holder.

3. RIGHTS AND LIABILITIES AS BETWEEN BANKS.

- 631. In general.
- 632. Check-kiting schemes.
- 633. Lost or stolen items.
- 634. Improper or irregular checks or items.
- 635. — In general.
- 636. — Malfeasance; forgery, alteration, and fraud.
- 637. Warranties.

4. FINALITY.

- 641. In general.
- 642. Provisional credits and charge-backs.

(K) FUNDS TRANSFERS.

See also ¶526. Electronic Fund Transfers Act, see XVI(J).

- 651. In general.
- 652. Parties to transfers.
- 653. Payment and transfer orders.
- 654. — In general.
- 655. — Requisites and sufficiency.
- 656. — Erroneous orders.
- 657. — Acceptance or rejection.
 - (1). In general.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- (2). Liability and duty of receiving bank regarding unaccepted payment order.
- 658. — Cancellation or amendment.
- 659. Obligations of receiving bank in execution of payment order.
- 660. — In general.
- 661. — Sender's instructions.
- 662. — Errors in executing payment order.
 - (1). In general.
 - (2). Sender's responsibility to discover or report.
- 663. — Interest.
- 664. Payment of order.
- 665. — In general.
- 666. — Order of payment from account.
- 667. — Objections to payment.
 - (1). In general.
 - (2). Time for notice or objection.
- 668. — Payment to beneficiary.
- 669. Title to funds.
- 670. Authorization and verification.
- 671. — In general.
- 672. — Unauthorized orders; effect of fraud or other misconduct.
- 673. — Refund of payment.

(L) FEES, CHARGES, AND SET-OFFS.

Provisional credits and charge-backs, see ¶642. Loan-related fees and charges, see IV(M). Fees for dealings in exchange, money, securities, and investments, see IV(N).

- 681. In general.
- 682. Withdrawal fees.
- 683. Checking fees.
- 684. — In general.
- 685. — Check-cashing fees.
- 686. Overdraft fees.
- 687. Automated teller machine (ATM) fees.
- 688. Application of deposits to debts due institution; set-off by institution.
- 689. — In general.
- 690. — Debts not matured.
- 691. — Deposits made for special purpose.
- 692. — Deposits involving rights or claims of multiple parties.
 - (1). In general.
 - (2). Principal and agent; fiduciaries.
 - (3). Trustees.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- (4). Indorsers, guarantors, and sureties.
- 693. — Deposits of improper or irregular checks or items.
- 694. — Deposits fraudulently obtained by depositor.
- 695. — Application after assignment of deposit.
- 696. Setting off drawer's debts against payee/holder.
- 697. Set-off by depositor.
- 698. Lien of institution on deposits.

(M) LOANS AND DISCOUNTS.

Loan contracts, see COMMERCIAL PAPER, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS. Credit cards, see XIV.

1. IN GENERAL.

- 701. In general.
- 702. Requisites and validity of loan or discount in general.
- 703. Premiums.
- 704. Payment and satisfaction.
- 705. Secured lending; mortgages.

See also CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, PLEDGES, and SECURED TRANSACTIONS.
- 706. — In general.
- 707. — Savings and loans, credit unions, and related entities in general.
- 708. — Foreclosure and sale.
- 709. Loans to insiders.
- 710. — In general.
- 711. — Shareholders; stock as security.
- 712. — Directors, officers, employees, and agents.
- 713. Discount of forged or fraudulent paper.

2. INTEREST OR RATE OF DISCOUNT.

Generally applicable interest and usury laws, see INTEREST, USURY.

- 721. In general.
- 722. What is interest.
- 723. Institutions regulated.
- 724. — In general.
- 725. — National banks.
- 726. — Savings and loans, credit unions, and related entities.
- 727. — Federally insured institutions.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- 728. Charges and transactions regulated.
- 729. — In general.
- 730. — Discounts.
- 731. Permissible rate.
- 732. Operation and effect of impermissible charges and transactions; remedies.

3. RELATION BETWEEN INSTITUTION AND BORROWER.

- 741. In general.
- 742. Duty of care in general; torts in general.
- 743. Particular duties and torts.
- 744. — In general.
- 745. — Conversion and civil theft.
- 746. — Fraud and misrepresentation.
- 747. Duty of good faith and fair dealing.
- 748. — In general.
- 749. — Particular cases.
- 750. Fiduciary duties.
- 751. — In general.
- 752. — Particular cases.

(N) DEALINGS IN EXCHANGE, MONEY, SECURITIES, AND INVESTMENTS.**1. IN GENERAL.**

- 761. In general.
- 762. Commercial paper, negotiable instruments, and bills and notes in general.
See also COMMERCIAL PAPER.
- 763. Exchange in general.
- 764. Bills of exchange.
- 765. Money.
- 766. — In general.
- 767. — Gold and silver; bullion.
- 768. Foreign currency and exchange.
- 769. Stock or securities; investments.
Acquiring or holding stock, see §454. Bank holding companies, see X. Investment banking and securities regulation, see BROKERS, EXCHANGES, and SECURITIES REGULATION.
- 770. Loans by institution for others.
- 771. Circulating notes.
See also CURRENCY REGULATION.

2. ISSUE AND PAYMENT OF DRAFTS.

- 781. In general.
- 782. Cashier's checks; official bank checks.
- 783. Money orders.
- 784. Teller's checks.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 785. Traveler's checks.
- 786. Countermanding payment; stop-payment orders.
- 787. Payment of forged or altered paper.

3. LETTERS OF CREDIT.

- 791. In general.
- 792. Commercial or documentary letter of credit.
- 793. Standby letter of credit.
- 794. Assignment or transfer of letter of credit or of proceeds.
- 795. Customs and usages.
- 796. Term and renewal.
- 797. Justification for dishonor.
- 798. — In general.
- 799. — Relation to underlying transaction; independence principle.
- 800. — Notice of dishonor.
- 801. Compliance with terms; documents and drafts.
- 802. — In general.
- 803. — Warranty.
- 804. Conversion, civil theft, and other claims based in tort.
- 805. Waiver by or estoppel against issuer.

(O) ACTIONS BY OR AGAINST FINANCIAL INSTITUTIONS.

See also §322, 337, 349, 393, 433, 542, 546, 950, 1052.

1. IN GENERAL.

- 811. In general.
- 812. Capacity to sue and be sued.
- 813. — In general.
- 814. — National banks.
- 815. — Savings and loans, credit unions, and related entities.
- 816. — Federally insured institutions.
- 817. Nature and form of remedy.
Summary remedies, see JUDGMENT V.
- 818. Right of action and defenses.
- 819. Persons entitled to sue; standing.
- 820. — In general.
- 821. — Collection and payment of checks and similar items.
- 822. Conditions precedent.
- 823. Jurisdiction and venue.

172H. FINANCE, BANKING, AND CREDIT

Personal jurisdiction over nonresidents, or “long-arm” jurisdiction, see COURTS ¶13.1, *FEDERAL COURTS* X.

- 824. Time to sue; limitations and laches.
See also *LIMITATION OF ACTIONS*.
- 825. — In general.
- 826. — Contracts in general.
- 827. — Torts in general.
- 828. — Deposits and accounts.
- 829. — Collection and payment of checks and similar items.
- 830. — Funds transfers.
- 831. — Fees, charges, and set-offs.
- 832. — Loans and discounts.
 - (1). In general.
 - (2). Interest or rate of discount.
 - (3). Torts.
- 833. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.
- 834. Parties.
- 835. — In general.
- 836. — Use of name of bank or officer.
- 837. Process and appearance.

2. PLEADING.

- 841. In general.
- 842. Contracts in general.
- 843. Torts in general.
- 844. Deposits and accounts.
- 845. Collection and payment of checks and similar items.
- 846. Funds transfers.
- 847. Fees, charges, and set-offs.
- 848. Loans and discounts.
- 849. — In general.
- 850. — Interest or rate of discount.
- 851. — Torts.
- 852. Dealings in exchange, money, securities, and investments.
- 853. — In general.
- 854. — Letters of credit.

3. EVIDENCE.

Evidence of corporate or other organizational existence, see ¶264.

- 861. In general.
- 862. Presumptions, inferences, and burden of proof.
- 863. — In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 864. — Contracts in general.
- 865. — Torts in general.
- 866. — Deposits and accounts.
- 867. — Collection and payment of checks and similar items.
- 868. — Funds transfers.
- 869. — Fees, charges, and set-offs.
- 870. — Loans and discounts.
 - (1). In general.
 - (2). Interest or rate of discount.
 - (3). Torts.
- 871. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.
- 872. Admissibility.
- 873. Degree of proof.
- 874. Weight and sufficiency.
- 875. — In general.
- 876. — Contracts in general.
- 877. — Torts in general.
- 878. — Deposits and accounts.
- 879. — Collection and payment of checks and similar items.
- 880. — Funds transfers.
- 881. — Fees, charges, and set-offs.
- 882. — Loans and discounts.
 - (1). In general.
 - (2). Interest or rate of discount.
 - (3). Torts.
- 883. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.

4. TRIAL.

- 891. In general.
- 892. Questions of law or fact.
- 893. — In general.
- 894. — Contracts in general.
- 895. — Torts in general.
- 896. — Deposits and accounts.
- 897. — Collection and payment of checks and similar items.
- 898. — Funds transfers.
- 899. — Fees, charges, and set-offs.
- 900. — Loans and discounts.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- (1). In general.
- (2). Interest or rate of discount.
- (3). Torts.
- 901. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.
- 902. Instructions.
- 903. — In general.
- 904. — Contracts in general.
- 905. — Torts in general.
- 906. — Deposits and accounts.
- 907. — Collection and payment of checks and similar items.
- 908. — Funds transfers.
- 909. — Fees, charges, and set-offs.
- 910. — Loans and discounts.
 - (1). In general.
 - (2). Interest or rate of discount.
 - (3). Torts.
- 911. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.

5. JUDGMENT AND RELIEF.

- 921. In general.
- 922. Damages.
- 923. — In general.
- 924. — Collection and payment of checks and similar items.
- 925. — Letters of credit.
- 926. — Torts.
- 927. Punitive or exemplary damages.
- 928. Injunction.
- 929. — In general.
- 930. — Letters of credit.
- 931. Preliminary injunction.
- 932. — In general.
- 933. — Letters of credit.
- 934. Costs and fees.

(P) MERGER, CONSOLIDATION, AND REORGANIZATION.*Failed or failing institutions, see IV(Q)7.*

- 941. In general.
- 942. Shareholder rights and responsibilities.
- 943. — In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 944. — Dissenting shareholders; appraisal.
- 945. Approval or disapproval, and proceedings therefor.
- 946. Operation and effect.
- 947. State-to-national or national-to-state reorganization.
- 948. — In general.
- 949. — Operation and effect.
- 950. Actions by or against surviving entity.

(Q) FAILED OR FAILING INSTITUTIONS, WINDING UP, AND CLOSURE.**1. IN GENERAL.**

- 961. In general.
- 962. Dissolution or forfeiture of franchise in general.
Voluntary dissolution or liquidation, see IV(Q)8.
- 963. Insolvency and its effect in general.
- 964. — In general.
- 965. — Transfers and preferences affected by insolvency.
- 966. — Rights of persons making deposits after insolvency.
- 967. — Civil liability on insolvency.
- 968. Remedies and proceedings in general.
- 969. Assignments for benefit of creditors.

2. OFFICIAL SUPERVISION AND CONTROL IN GENERAL.

- 971. In general.
- 972. Liquidation.
- 973. Conservatorship.
- 974. Receivership.
- 975. — In general.
- 976. — Appointment and removal of receivers.
- 977. — Compensation of receivers.
- 978. — Operation and effect of receivership.
- 979. Federal supervision and control.
- 980. — In general.
- 981. — Conservatorship or receivership.
- 982. — State institutions.

3. MANAGEMENT AND ADMINISTRATION OF INSTITUTION'S ASSETS AND AFFAIRS.

- 991. In general.
- 992. Collection and protection of assets.

172H. FINANCE, BANKING, AND CREDIT**IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)**

- 993. Sale or other disposition of assets.
- 994. Contracts and leases.
- 995. — In general.
- 996. — Repudiation.
- 997. Collection, settlement, or adjustment of loans.
- 998. Tort claims.
- 999. Fraudulent or preferential transfers.
- 1000. Establishment of new or “bridge” depository institution.

4. CLAIMS; RIGHTS AND LIABILITIES OF CLAIMANTS AND STAKEHOLDERS.

- 1011. In general.
- 1012. Claims provable; estoppel to claim.
- 1013. Presentation and proof of claims.
- 1014. — In general.
- 1015. — Time for presentation and proof.
- 1016. Determination of claims; allowance or disallowance.
- 1017. — In general.
- 1018. — Time for determination.
- 1019. Payment, distributions, and priorities in general.
- 1020. Deposits and depositors.
- 1021. — In general.
- 1022. — Special or segregated deposits.
- 1023. — Deposits of trust funds.
- 1024. Holders of checks, drafts, or circulating notes.
- 1025. Shareholders and members.
- 1026. — In general.
- 1027. — Savings and loans, credit unions, and related entities.
- 1028. Dividends.
- 1029. Fees and expenses.
- 1030. Administrative review of claims.

5. ENFORCEMENT OF UNWRITTEN OR UNRECORDED AGREEMENTS; D'OENCH DUHME DOCTRINE.

- 1041. In general.
- 1042. Particular cases.

6. JUDICIAL REVIEW OR INTERVENTION.

- 1051. In general.
- 1052. Actions by or against institutions and their receivers, conservators, or liquidators.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 1053. — In general.
- 1054. — National banks.
- 1055. — Savings and loans, credit unions, and related entities.
- 1056. Conditions precedent and defenses in general.
- 1057. Immunity.
- 1058. Time for proceedings; limitations and laches.
- 1059. Exhaustion of other remedies.
- 1060. Pleading.
- 1061. Evidence.
- 1062. Trial and judgment.

7. SUPERVISORY MERGERS, CONSOLIDATIONS, AND REORGANIZATIONS.

- 1071. In general.
- 1072. Contracts and agreements; Winstar claims.
- 1073. — In general.
- 1074. — Damages and restitution.

8. VOLUNTARY LIQUIDATION AND DISSOLUTION.

- 1081. In general.
- 1082. National banks.
- 1083. Savings and loans, credit unions, and related entities.
- 1084. Shareholder rights and responsibilities.
- 1085. Proceedings.

(R) PENALTIES AND PROCEEDINGS TO IMPOSE.

- 1091. In general.
- 1092. Unauthorized banking.
- 1093. Excessive interest.

V. CLEARING HOUSES.

- 1101. In general; nature and status.
- 1102. Constitution, by-laws, and rules.
- 1103. Settlements and transactions through clearing house.
- 1104. Rights and liabilities of banks not members.
- 1105. Security for payment of balances.
- 1106. Actions.

VI. FEDERAL RESERVE SYSTEM.

Federal Reserve notes, see CURRENCY REGULATION ¶3.

172H. FINANCE, BANKING, AND CREDIT**VI. FEDERAL RESERVE SYSTEM.**(Cont'd)

- 1111. In general.
- 1112. Federal Reserve Board.
- 1113. — In general.
- 1114. — Officers and employees.
- 1115. Federal Reserve Banks.
- 1116. — In general.
- 1117. — Deposits, exchange, and collection.
- 1118. — Loans and discounts.
- 1119. — Actions.
- 1120. Member banks.
Bank holding companies, see X.

VII. FEDERAL FARM CREDIT SYSTEM.

See also AGRICULTURE ¶3.5.

- 1131. In general.
- 1132. Government agencies and instrumentalities in general.
- 1133. Farm credit banks.
- 1134. — In general.
- 1135. — Joint stock land banks.
- 1136. Farm loan associations and cooperative organizations.
- 1137. Loans and mortgages.
- 1138. — In general.
- 1139. — Foreclosure.
- 1140. Judicial review or intervention; actions.
- 1141. Insolvency and dissolution.

VIII. FEDERAL HOME LOAN BANK SYSTEM.

- 1151. In general.
- 1152. Government agencies and instrumentalities in general.
- 1153. Federal home loan banks.
- 1154. — In general.
- 1155. — Officers and employees.
- 1156. Judicial review or intervention; actions.

IX. FEDERAL DEPOSIT INSURANCE.

- 1161. In general.
- 1162. Institutions insured and subject to regulation.
- 1163. Assessments and premiums.
- 1164. Government agencies and instrumentalities.
- 1165. — In general; nature and status.
- 1166. — Officers and employees.
- 1167. — Powers, functions, and dealings in general.

IX. FEDERAL DEPOSIT INSURANCE.(Cont'd)

- 1168. — Subrogation rights.
- 1169. — Proceedings before agency or instrumentality.
- 1170. Regulation of institution-affiliated parties.
- 1171. — In general.
- 1172. — Suspension, removal, prohibition, and other penalties.
- 1173. — Golden parachutes and indemnification payments.
- 1174. Judicial review or intervention; actions.

X. BANK HOLDING COMPANIES.

- 1181. In general; nature and status.
- 1182. Federal regulation.
- 1183. — In general.
- 1184. — Federal Reserve Board approval and regulation in general.
- 1185. — Permitted activities; non-banking business.
 - (1). In general.
 - (2). Antitrust and tying.
- 1186. — Administrative proceedings.
 - (1). In general.
 - (2). Hearing, findings, and determination.
 - (3). Judicial review or intervention.
- 1187. — Actions.
- 1188. — Penalties; treble damages.
- 1189. State regulation.
- 1190. — In general.
- 1191. — Administrative agencies and proceedings.
- 1192. — Actions.

XI. TRUST AND INVESTMENT COMPANIES.

Investment banking, see BROKERS and EXCHANGES. Securities regulation, see SECURITIES REGULATION.

- 1201. In general.
- 1202. Control and regulation in general.
- 1203. — In general.
- 1204. — Administrative agencies and proceedings.
- 1205. Organization and incidents of existence.
- 1206. Capital and stock.
- 1207. Shareholders and members.
- 1208. Directors, officers, employees, and agents.

172H. FINANCE, BANKING, AND CREDIT**XI. TRUST AND INVESTMENT COMPANIES.(Cont'd)**

- 1209. — In general.
- 1210. — Liabilities of company for conduct of directors, officers, employees, and agents.
- 1211. Powers, functions, and dealings.
- 1212. — In general.
- 1213. — Deposits and accounts.
- 1214. — Loans and discounts.
- 1215. Mergers, acquisitions, and reorganizations.
- 1216. Insolvency and dissolution.

XII. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

- 1221. In general.
- 1222. Control and regulation in general.
- 1223. — In general.
- 1224. — Authority or license to do business.
- 1225. — Administrative agencies and proceedings.
- 1226. Loans, interest, and charges.
- 1227. Effect of violation of regulations or lack of license.
- 1228. Actions.
- 1229. — In general.
- 1230. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1231. — Parties; standing.
- 1232. — Pleading.
- 1233. — Evidence.
- 1234. — Trial.
- 1235. — Judgment and relief.
- 1236. — Costs and fees.
- 1237. Insolvency and dissolution.

XIII. PAWNBROKERS AND PAWNSHOPS.

- 1241. In general.
- 1242. Control and regulation in general.
- 1243. — In general.
- 1244. — Authority or license to do business.
- 1245. — Administrative agencies and proceedings.
- 1246. Loans, interest, and charges.
- 1247. Rights and liabilities as to goods pawned.

XIII. PAWNBROKERS AND PAWNSHOPS.(Cont'd)

- 1248. Effect of violation of regulations or lack of license.
- 1249. Actions.
- 1250. — In general.
- 1251. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1252. — Parties; standing.
- 1253. — Pleading.
- 1254. — Evidence.
- 1255. — Trial.
- 1256. — Judgment and relief.
- 1257. — Costs and fees.
- 1258. Penalties.

XIV. CREDIT CARDS.

Credit card theft or fraud, see FALSE PRETENSES
V.

- 1261. In general.
- 1262. Control and regulation in general.
- 1263. — In general.
- 1264. — Authority or license to do business.
- 1265. — Administrative agencies and proceedings.
- 1266. Interest, charges, and fees.
- 1267. Disclosure requirements.
- 1268. Credit discrimination.
- 1269. Contracts.
- 1270. — In general.
- 1271. — Construction and operation.
- 1272. — Performance or breach.
- 1273. Torts.
- 1274. — In general.
- 1275. — Negligence.
- 1276. — Fraud and misrepresentation.
- 1277. Duty of good faith and fair dealing.
- 1278. Fiduciary duties.
- 1279. Liability for unauthorized use of credit cards.
- 1280. Assignment and collection of credit card debt.
- 1281. Actions.
- 1282. — In general.
- 1283. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1284. — Parties; standing.

172H. FINANCE, BANKING, AND CREDIT**XIV. CREDIT CARDS.**(Cont'd)

- 1285. — Pleading.
- 1286. — Evidence.
- 1287. — Trial.
- 1288. — Judgment and relief.
- 1289. — Costs and fees.
- 1290. Penalties.

XV. CREDIT REPORTING.

- 1301. In general.
- 1302. Control and regulation in general.
- 1303. — In general.
- 1304. — Authority or license to do business.
- 1305. — Administrative agencies and proceedings.
- 1306. Contracts.
- 1307. Liability for inaccurate or incomplete information.
- 1308. Actions.
- 1309. — In general.
- 1310. — Time to sue; limitations and laches.

See also LIMITATION OF ACTIONS.

- 1311. — Parties; standing.
- 1312. — Pleading.
- 1313. — Evidence.
- 1314. — Trial.
- 1315. — Judgment and relief.
- 1316. — Costs and fees.

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.

State consumer credit regulation, see III. Truth in Savings Act, see IV(I)4. Restrictions on garnishment, see CREDITORS' REMEDIES ¶1052 and LABOR AND EMPLOYMENT ¶768.

(A) IN GENERAL.

- 1321. In general.
- 1322. Truth in lending in general.
- 1323. Persons and transactions subject to or protected by regulation in general.
- 1324. Practices prohibited or required in general.
- 1325. Open-end credit, revolving charges, and credit cards.
- 1326. — In general.
- 1327. — Liability for unauthorized use of credit cards.
- 1328. Interest, charges, and fees.

Generally applicable interest and usury laws, see INTEREST, USURY.

- 1329. Advertising and marketing.
- 1330. Abusive and predatory practices.

(B) DISCLOSURE REQUIREMENTS IN GENERAL.

- 1341. In general.
- 1342. Form and sufficiency of disclosure in general.
- 1343. Price, balance, rate, and charges in general.
- 1344. — In general.
- 1345. — Open-end credit, revolving charges, and credit cards; periodic statements.
- 1346. Rebates and refunds in general; prepayment penalty.
- 1347. Default, delinquency, or similar charges; acceleration clause.
- 1348. Insurance, matters relating to.
- 1349. Liens and security interests; confession of judgment clauses.
- 1350. Borrower's rights and remedies.
- 1351. Time for disclosure.

(C) MORTGAGE AND RESIDENTIAL LENDING; REAL ESTATE SETTLEMENT PRACTICES.**1. IN GENERAL.**

- 1361. In general.
- 1362. Persons and transactions subject to or protected by regulation.
- 1363. Practices prohibited or required in general.
- 1364. Interest, charges, and fees.
- 1365. — In general.
- 1366. — Kickbacks and unearned fees in general.
- 1367. — Yield spread premiums and other forms of indirect compensation.
- 1368. — Affiliated business arrangements.
- 1369. Disclosure requirements.
- 1370. — In general.
- 1371. — Form and sufficiency of disclosure in general.
- 1372. — Price, balance, rate, and charges in general.
- 1373. — Rebates and refunds in general; prepayment penalty.
- 1374. — Default, delinquency, or similar charges; acceleration clause.
- 1375. — Insurance, matters relating to.

172H. FINANCE, BANKING, AND CREDIT**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1376. — Liens and security interests; confession of judgment clauses.
- 1377. — Borrower's rights and remedies.
- 1378. — Time for disclosure.

2. SERVICING.

- 1381. In general.
- 1382. Transferability of servicing, and disclosure thereof.
- 1383. Notice and effect of transfer.
- 1384. Requests and inquiries from borrowers, and responses thereto.
- 1385. — In general.
- 1386. — Qualified written requests.
- 1387. Administration of escrow accounts.
- 1388. Loss mitigation; loan modification.

(D) LEASES AND RENTAL AGREEMENTS.

- 1391. In general.
- 1392. Persons and transactions subject to or protected by regulation.
- 1393. Practices prohibited or required in general.
- 1394. Interest, charges, and fees.
- 1395. Disclosure requirements.
- 1396. — In general.
- 1397. — Motor vehicles.

(E) CREDIT BILLING.

- 1401. In general.
- 1402. Persons and transactions subject to or protected by regulation.
- 1403. Practices prohibited or required in general.
- 1404. Billing errors and disputes.

(F) CREDIT REPAIR AND COUNSELING.

- 1411. In general.
- 1412. Persons and transactions subject to or protected by regulation.
- 1413. Practices prohibited or required in general.
- 1414. Disclosure requirements.

(G) CREDIT REPORTING.

- 1421. In general.
- 1422. Persons and transactions subject to or protected by regulation.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1423. — In general.
- 1424. — Reporting agencies.
- 1425. — Furnishers of information.
- 1426. — Users of information.
- 1427. Reports subject to regulation.
- 1428. Practices prohibited or required in general.
- 1429. Obligations of reporting agencies.
- 1430. — In general.
- 1431. — Disclosures to consumer.
- 1432. Obligations of furnishers of information.
- 1433. Obligations of requesters or users of information.
- 1434. — In general.
- 1435. — Lenders and creditors.
- 1436. — Employers.
- 1437. — Insurers.
- 1438. Liability for inaccurate or incomplete information.

**(H) CREDIT DISCRIMINATION; EQUAL
CREDIT OPPORTUNITY.**

- 1441. In general.
- 1442. Persons and transactions subject to or protected by regulation.
- 1443. — In general.
- 1444. — Creditors and credit transactions.
- 1445. — Applicants and applications for credit.
- 1446. Practices prohibited or required in general.
- 1447. Particular bases of discrimination.
- 1448. — In general.
- 1449. — Race, color, or national origin.
- 1450. — Sex or gender.
- 1451. — Marital status.
- 1452. — Age.
- 1453. — Disability.
- 1454. — Source of income; receipt of public assistance.
- 1455. Adverse action.
- 1456. — In general.
- 1457. — Notice of adverse action; statement of reasons.
- 1458. Redlining, reverse redlining, and targeting.
- 1459. Disparate impact.

172H. FINANCE, BANKING, AND CREDIT**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

1460. Discrimination based on exercise of rights; retaliation.

(I) DEBT COLLECTION PRACTICES.

- 1471. In general.
- 1472. Persons and transactions subject to or protected by regulation.
- 1473. — In general.
- 1474. — Debt in general.
- 1475. — Consumers and consumer debt.
- 1476. — Debt collectors and debt collection in general.
- 1477. — Creditors and lenders; assignees and loan servicers.
- 1478. — Attorneys and law firms; legal services.
- 1479. — Process servers.
- 1480. Practices prohibited or required in general.
- 1481. Communications, representations, and notices; debtor's response.
- 1482. — In general.
- 1483. — "Least sophisticated consumer" test in general.
- 1484. — Particular communications, representations, notices, and responses.
- 1485. — Disputed debts; validation notices and responses thereto.
- 1486. — Communications with attorneys.
- 1487. — Communications with third parties.
- 1488. Collecting unauthorized amounts.
- 1489. Use of false or fictitious name.
- 1490. Designing, compiling, or furnishing forms; "flat-rating".
- 1491. Litigation conduct.
- 1492. — In general.
- 1493. — Venue.
- 1494. — Summons, complaints, and other process and filings.
- 1495. Offers to settle or compromise.
- 1496. Harassment and abuse.

(J) ELECTRONIC FUNDS TRANSFERS.

- 1501. In general.
- 1502. Persons and transactions subject to or protected by regulation.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1503. Practices prohibited or required in general.
- 1504. — In general.
- 1505. — Fees and charges.
- 1506. — Notices, disclosures, and documentation.
- 1507. Automated teller machines (ATMs).
- 1508. — In general.
- 1509. — Fees and charges.
- 1510. — Notices, disclosures, and documentation.
- 1511. Authorization.
- 1512. — In general.
- 1513. — Disputes; unauthorized transfers and liability therefor.
- 1514. — Preauthorization.

**(K) ENFORCEMENT, REMEDIES,
AND PROCEEDINGS.****1. IN GENERAL.**

- 1521. In general.
- 1522. Civil liability in general.
- 1523. Strict liability in general.
- 1524. Nature of violation.
- 1525. — In general.
- 1526. — Objective or subjective standard; actual deception or misunderstanding.
- 1527. — Technical or minor violations.
- 1528. — Number of violations; pattern or practice.
- 1529. Defenses and safe harbors in general.
- 1530. Knowledge and intent; bona fide errors; good-faith defense.
- 1531. — In general.
- 1532. — Mortgage and residential lending; real estate settlement practices.
- 1533. — Credit reporting.
- 1534. — Debt collection practices.
- 1535. Reliance; causation; injury, loss, or damage.
- 1536. — In general.
- 1537. — As prerequisite for monetary relief.
- 1538. — Mortgage and residential lending; real estate settlement practices.
- 1539. Persons liable.
- 1540. — In general.

172H. FINANCE, BANKING, AND CREDIT**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1541. — Holders in general.
- 1542. — Assignees.
- 1543. — Servicers.
- 1544. — Vicarious liability for acts of holders, assignees, and servicers.
- 1545. — Multiple creditors; joint and several liability.
- 1546. — Government entities, agencies, instrumentalities, and their assignees.
- 1547. — Debt collection practices.
- 1548. Exclusive and concurrent remedies or laws.
- 1549. Conditions precedent; exhaustion of other remedies.
- 1550. Waiver of rights or remedies.

**2. EFFECT OF VIOLATION ON ENFORCEABILITY
OF TRANSACTION.**

- 1551. In general.
- 1552. Rescission and cancellation in general.
- 1553. Transactions and violations for which rescission or cancellation may be had.
- 1554. — In general.
- 1555. — Mortgage and residential lending; real estate settlement practices.
- 1556. Time for rescission or cancellation.
- 1557. Manner of exercising right to rescission or cancellation; lender's response.
- 1558. Assertion of violation as defense to suit on underlying obligation; recoupment and set-off.
- 1559. — In general.
- 1560. — Time for assertion.
- 1561. Conditions; tender or return of consideration received.

**3. ADMINISTRATIVE AGENCIES
AND PROCEEDINGS.**

- 1571. In general.
- 1572. Officers and employees.
- 1573. Jurisdiction and authority.
- 1574. Investigations and examinations.
- 1575. Rules and regulations.
- 1576. Hearings, adjudications, and orders.
- 1577. Administrative review of administrative action.
- 1578. Judicial review and enforcement.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1579. Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE §438(20).

4. ACTIONS.

- 1581. In general.
- 1582. Right of action.
- 1583. — In general.
- 1584. — Mortgage and residential lending; real estate settlement practices.
- 1585. — Credit reporting.
- 1586. — Credit discrimination; equal credit opportunity.
- 1587. — Debt collection practices.
- 1588. Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1589. — In general.
- 1590. — Mortgage and residential lending; real estate settlement practices.
- 1591. — Credit reporting.
- 1592. — Credit discrimination; equal credit opportunity.
- 1593. — Debt collection practices.
- 1594. Parties; standing.
- 1595. — In general.
- 1596. — Mortgage and residential lending; real estate settlement practices.
- 1597. — Credit reporting.
- 1598. — Credit discrimination; equal credit opportunity.
- 1599. — Debt collection practices.
- 1600. Pleading.
- 1601. — In general.
- 1602. — Mortgage and residential lending; real estate settlement practices.
- 1603. — Credit reporting.
- 1604. — Credit discrimination; equal credit opportunity.
- 1605. — Debt collection practices.
- 1606. Trial in general.
- 1607. Questions of law or fact.
- 1608. — In general.
- 1609. — Mortgage and residential lending; real estate settlement practices.
- 1610. — Credit reporting.
- 1611. — Credit discrimination; equal credit opportunity.
- 1612. — Debt collection practices.

172H. FINANCE, BANKING, AND CREDIT**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1613. Instructions.
- 1614. — In general.
- 1615. — Mortgage and residential lending;
real estate settlement practices.
- 1616. — Credit reporting.
- 1617. — Credit discrimination; equal
credit opportunity.
- 1618. — Debt collection practices.
- 1619. Judgment and relief in general.

5. EVIDENCE.

- 1621. In general; admissibility.
- 1622. Presumptions, inferences, and burden
of proof.
- 1623. — In general.
- 1624. — Mortgage and residential lending;
real estate settlement practices.
- 1625. — Credit reporting.
- 1626. — Credit discrimination; equal
credit opportunity.
- 1627. — Debt collection practices.
- 1628. Weight and sufficiency.
- 1629. — In general.
- 1630. — Mortgage and residential lending;
real estate settlement practices.
- 1631. — Credit reporting.
- 1632. — Credit discrimination; equal
credit opportunity.
- 1633. — Debt collection practices.

6. MONETARY RELIEF; DAMAGES.

- 1641. In general.
- 1642. Grounds and subjects.
- 1643. — In general.
- 1644. — Mortgage and residential lending;
real estate settlement practices.
- 1645. — Credit reporting.
- 1646. — Credit discrimination; equal
credit opportunity.
- 1647. — Debt collection practices.
- 1648. Measure and amount.
- 1649. Statutory damages or penalties.
- 1650. Treble damages.
- 1651. Punitive or exemplary damages.
- 1652. Proceedings to impose; evidence.

7. INJUNCTIVE RELIEF.

- 1661. In general.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1662. Grounds, subjects, and scope of relief.
- 1663. — In general.
- 1664. — Mortgage and residential lending;
real estate settlement practices.
- 1665. — Credit reporting.
- 1666. — Credit discrimination; equal
credit opportunity.
- 1667. — Debt collection practices.
- 1668. Preliminary or temporary relief.
- 1669. Proceedings to impose; evidence.
- 1670. Continuing, modifying, vacating, or dis-
solving.
- 1671. Violation; punishment.

8. COSTS AND FEES.

- 1681. In general.
- 1682. Mortgage and residential lending; real
estate settlement practices.
- 1683. Credit reporting.
- 1684. Credit discrimination; equal credit op-
portunity.
- 1685. Debt collection practices.
- 1686. Proceedings to impose; evidence.

XVII. FINANCIAL RECORDS AND PRIVACY.

*Fair Credit Reporting Act, see XVI(G). Electronic
Funds Transfer Act, see XVI(J). Bank Secrecy Act, see
CURRENCY REGULATION. Tort of invasion of pri-
vacy, see TORTS IV.*

(A) IN GENERAL.

- 1691. In general.
- 1692. Persons and transactions subject to or
protected by regulation.
- 1693. Information subject to regulation.
- 1694. Obligations imposed; practices prohib-
ited or required.
- 1695. — In general.
- 1696. — Identity theft in general.
Criminal offenses, see FALSE PRETENSES V.
- 1697. — Banks and similar financial insti-
tutions, obligations and practices of.
- 1698. — Retailers and other merchants,
obligations and practices of.
- 1699. Compelled disclosure.

**(B) ENFORCEMENT, REMEDIES,
AND PROCEEDINGS.**

- 1701. In general.

172H. FINANCE, BANKING, AND CREDIT**XVII. FINANCIAL RECORDS
AND PRIVACY.(Cont'd)**

- 1702. Administrative agencies and proceedings.
- 1703. Actions.
- 1704. — In general.
- 1705. — Right of action; standing.
- 1706. Evidence.
- 1707. Monetary relief; damages.
- 1708. Injunctive relief.
- 1709. Costs and fees.

XVIII. OFFENSES.

*Credit card theft or fraud, access device theft or fraud,
and identity theft or fraud, see FALSE PRETENSES V.*

(A) IN GENERAL.

- 1711. In general.
- 1712. Federal jurisdiction and authority.
- 1713. Fraud and false statements.
- 1714. — In general.
- 1715. — Scheme to defraud financial institution; bank fraud.
 - (1). In general.
 - (2). By means of false or fraudulent pretenses, representations, or promises.
- 1716. — False applications for loans or credit.
- 1717. — False entries in books, reports, or statements of institution.
- 1718. — Wrongful certification of check.
- 1719. Theft, embezzlement, or misapplication of funds by officers or employees of financial institutions.
- 1720. Corruptly influencing officers or employees of financial institutions.
- 1721. Loans or gratuities to financial institution examiners.
- 1722. Insolvency-related offenses.
- 1723. Unauthorized or unlicensed activity.
- 1724. — In general.
- 1725. — Money transmitting businesses.
- 1726. Offenses involving real estate settlement procedures.
- 1727. Parties to offenses; persons liable.

(B) PROSECUTIONS.

- 1731. In general.
- 1732. Indictment and information.

XVIII. OFFENSES.(Cont'd)

- 1733. Evidence.
- 1734. — In general; admissibility.
- 1735. — Presumptions, inferences, and burden of proof.
- 1736. — Weight and sufficiency.
- 1737. Trial.
- 1738. — In general.
- 1739. — Questions of law or fact.
- 1740. — Instructions.
- 1741. Sentence and punishment.

174. FINES**SUBJECTS INCLUDED**

Pecuniary punishments imposed by sentences of courts on convictions of crime
 Nature and scope of such punishment in general
 Constitutional and statutory provisions relating thereto
 In what cases and for what offenses fines are imposed in general
 Jurisdiction over and proceedings for enforcement of fines
 Payment or working out fines and costs, and imprisonment for nonpayment thereof
 Discharge from fines or from imprisonment therefor and disposition of moneys received for fines
 Constitutional prohibition against excessive fines

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Contempt of court, punishment by fine, see CONTEMPT
 Pardon or commutation of sentence, effect of, see PARDON AND PAROLE
 Particular offenses, fines for, see specific topics
 Penalties recoverable by action for violations of statutes, see PENALTIES

- 1. Constitutional and statutory provisions.

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- 1.3. Excessive fines.
- 1.5. Imposition and liability in general.
2. Enforcement in general.
3. Lien of judgment.
5. Application of money deposited as bail.
6. Execution against property.
7. Actions.
8. Recovery by indictment.
9. Arrest of defendant.
10. Imprisonment on nonpayment.
11. — In general.
12. — In satisfaction of fine.
13. — Discharge of prisoner.
14. Working out fine.
15. — In general.
16. — Under convict bond.
17. — Inability to labor.
- 17.5. Death of defendant.
18. Remission.
19. Payment.
20. Disposition of proceeds.
21. Rights and remedies of informers.

175. FIRES**SUBJECTS INCLUDED**

- Burning or setting fire to property other than buildings and similar structures and their contents
- Refusing to aid in or obstructing extinguishment of fires
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses
- Civil liability for willful burning or setting fire

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Buildings and similar structures and their contents, burning or setting fire to, see ARSON
- Negligence causing fire, liabilities for, see NEGLIGENCE, RAILROADS and other specific topics

1. Nature and elements of offenses in general.
2. Statutory provisions.
3. Burning or setting fire.
4. Indictment or information.
5. Evidence.
6. Trial and review.
7. Civil liability for willful or criminal burning or setting fire.
8. Extinguishment of fires in fields or woods.
9. Investigation of origin of fires; search.

176. FISH**SUBJECTS INCLUDED**

- Animals inhabiting the water
- Regulations for their preservation
- Nature and incidents of rights of fishery

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Indian fishing rights, see INDIANS X
- Protection of fish and other aquatic animals, particularly endangered or threatened species, see ENVIRONMENTAL LAW
- Sunday, fishing on, see SUNDAY

1. Nature of property.
2. What is fish.
3. Fish in public waters.
4. Seal fisheries.
5. Private rights of fishery.
 - (.5). In general.
 - (1). Nature, acquisition, and extent.
 - (2). Conveyances and contracts respecting fishery rights.
 - (3). Civil liability for invasion of private rights.
6. Injury to or destruction of fish.
7. Oyster and clam beds.
 - (1). In general.
 - (2). Grant, allotment, or lease by public authorities.
 - (3). Invasion of private rights.
8. Power to protect and regulate.

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9. Constitutional and statutory provisions.
10. Licenses.
 - (1). In general.
 - (2). Fishing locations.
11. Fish wardens and other officers.
12. Preservation and propagation.
Injunctive relief, see INJUNCTION §1394.
13. Offenses.
 - (1). In general.
 - (2). Use of nets or other devices.
 - (3). Offenses as to oysters, clams, and other shellfish.
14. Penalties for violations of regulations.
15. Criminal prosecutions.
16. Searches, seizures, and forfeitures.
17. Rights of property and contracts as to fish illegally taken.

178. FOOD**SUBJECTS INCLUDED**

- Regulation of manufacture, sale or use of articles of food and drink and of substitutes and imitations thereof
- Rights of property and traffic in unwholesome or adulterated articles used as food, etc.
- Liabilities for injuries from the sale, use, etc., thereof
- Violations of laws relating to such articles, and prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Adulteration as a public offense, see ADULTERATION
- Inspection for prevention of fraud or commercial purposes, see INSPECTION
- Interstate commerce, regulations regarding commodities as articles of, see COMMERCE
- Intoxicants, see ALCOHOLIC BEVERAGES
- Medicines, see CONTROLLED SUBSTANCES
- Poisons, see CONTROLLED SUBSTANCES and ENVIRONMENTAL LAW

Unfair trade practices under statutes, see ANTI-TRUST AND TRADE REGULATION

Warranties on sale, see SALES

- 0.5. What is food.
1. Power to make regulations.
 - 1.1. — In general.
 - 1.5. — State power in general.
 - 1.6. — Municipal power in general.
 - 1.7. — Administrative power in general.
 - 1.8. — Milk products and substitutes.
 - (1). In general.
 - (2). State power.
 - (3). Municipal power.
 - (4). Administrative power.
 - 1.9. — Milk marketing and price.
 - (1). In general.
 - (2). State power.
 - (3). Administrative power.
 - 1.10. — Meat and poultry.
2. Statutory and municipal regulations in general.
3. License and inspection.
4. Quantity and price.
 - 4.1. — In general.
 - 4.5. — Milk marketing.
 - (1). In general.
 - (2). Subjects of regulations.
 - (3). Classification of milk.
 - (4). Price differentials and allowances; settlement funds.
 - (5). Administrative procedure.
 - (6). Judicial review and enforcement of administrative action.
5. Purity and quality.
6. Unwholesome or unfit for use.
7. Substitutes or imitations in general.
8. Oleomargarine and other imitations of dairy products.
9. Imitations of lard or other fats or oils.
10. Imitations of vinegar.
11. Violations of regulations.
12. — In general.
13. — Illegal manufacture.
14. — Illegal sale or use.
15. — Misbranding or want of notice to purchasers or public.
16. Penalties and actions therefor.
17. Criminal prosecutions.
18. — In general.

179. FORCIBLE ENTRY AND DETAINER

- 19. — Preliminary proceedings.
- 20. — Indictment or information.
 - (1). In general.
 - (2). Description of purchaser.
 - (3). Description of packages.
 - (4). Possession of adulterated food with intent to sell.
 - (5). Issues, proof, and variance.
- 21. — Evidence.
- 22. — Trial and review.
- 23. — Sentence and punishment.
- 24. Searches, seizures, and forfeitures.
 - (1). In general.
 - (2). Condemnation or forfeiture proceedings.
 - (2.1). — In general.
 - (3). — Evidence and fact questions.
- 25. Liability for injuries.
 - 25.1. — In general.
 - 25.2. — What law governs; preemption.
 - 25.3. — Strict liability, in general.
 - 25.4. — Violation of statute or other regulation, in general.
 - 25.5. — Duty and standard of care, in general.
 - 25.6. — Inspection.
 - 25.7. — Preparation and manufacture.
 - 25.8. — Packaging, in general.
 - 25.9. — Warnings.
 - 25.10. — Nature of defect or danger, in general.
 - 25.11. — Spoilage, contamination and foreign objects.
 - (1). In general.
 - (2). Milk and dairy products.
 - (3). Meat, fish and poultry.
 - 25.12. — Temperature when consumed or served.
 - 25.13. — Nature of injury or damage.
 - 25.14. — Proximate cause.
 - 25.15. — Change in condition; tampering.
 - 25.16. — Persons entitled to sue.
 - (1). In general.
 - (2). Privity.
 - 25.17. — Persons liable.
 - 25.18. — Defenses.
 - (1). In general.
 - (2). Fault of plaintiff or third parties.
 - 25.19. — Proceedings, in general.

- 25.20. — Pleading.
- 25.21. — Time to sue and limitations.
- 25.22. — Evidence in general.
- 25.23. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Res ipsa loquitur.
- 25.24. — Admissibility.
- 25.25. — Weight and sufficiency.
 - (1). In general.
 - (2). Spoilage, contamination or presence of foreign object.
 - (3). Negligence or fault of defendant.
 - (4). Injury.
 - (5). Proximate cause.
 - (6). Fault of plaintiff or third parties.
- 25.26. — Questions for jury.
- 25.27. — Instructions.
- 25.28. — Verdict and findings.
- 26. Rights of property and contracts.

**179. FORCIBLE ENTRY
AND DETAINER**
SUBJECTS INCLUDED

Violently taking or retaining possession of property, with threats, force or arms, against the will of another entitled to its possession, and without authority of law

Nature and extent of liability therefor in general

Remedies for recovery of possession

Criminal responsibility for such forcible entry or forcible detainer, and prosecution and punishment thereof as a public offense

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Summary remedies for recovery of possession of lands—

Demised, see LANDLORD AND TENANT

Mortgaged, see MORTGAGES AND DEEDS OF TRUST

Sold, see REAL PROPERTY CONVEYANCES

179. FORCIBLE ENTRY AND DETAINER

Trespasses, recovery of damages, see TRESPASS

I. CIVIL LIABILITY, ¶¶1–48.

II. CRIMINAL RESPONSIBILITY, ¶¶49–59.

I. CIVIL LIABILITY.

1. Disseisin and remedies therefor in general.
2. Statutory provisions.
3. Right of entry to take possession without action.
4. Nature and elements of forcible entry.
5. Nature and elements of forcible or other unlawful detainer.
6. Nature and form of remedy.
 - (1). In general.
 - (2). Trial of title and right of possession.
7. Grounds of action in general.
8. Title to support action.
9. Prior possession of plaintiff.
 - (.5). In general.
 - (1). Necessity of possession.
 - (2). Right of possession and constructive possession.
 - (3). Sufficiency of actual possession in general.
 - (4). Residence.
 - (5). Scrambling possession.
 - (6). Fencing land.
 - (7). Possession of part of premises.
 - (8). Possession by agent or tenant.
10. Right of plaintiff to possession.
11. Notice to quit and demand of possession.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency.
 - (3). Time of giving.
 - (4). Service.
 - (5). Proof of service.
12. Defenses.
 - (1). In general.
 - (2). Title or possession of defendant.
13. Pendency of other action or proceeding.
14. Persons entitled to sue.
15. Persons against whom action may be brought.
 - (1). In general.

I. CIVIL LIABILITY.(Cont'd)

- (2). Persons not in possession.
16. Jurisdiction.
 - (.5). In general.
 - (1). District courts.
 - (2). Probate courts.
 - (3). Justices of the peace.
17. Time to sue and limitations.

See also LIMITATION OF ACTIONS.
18. Parties.
19. Process and appearance.
 - (.5). In general.
 - (1). Requisites and validity.
 - (2). Service and return.
 - (3). Amendment of process.
20. Proceedings for taking and delivery of possession.
21. Inquisition or other summary proceeding, and review thereof.
 - (.5). In general.
 - (1). Warrant, petition, affidavit, or notice.
 - (2). Traverse and proceedings thereon in general.
 - (3). Waiver of defects.
 - (4). Amendment of warrant or affidavit.
 - (5). New trial.
 - (6). Appeal.
 - (7). Bonds and liability thereon.
22. Pleading.
 - 22.1. — In general.
23. — Mode and form in general.
24. — Complaint or petition.
 - (.5). In general.
 - (1). Requisites and sufficiency in general.
 - (2). Averment as to title or possession.
 - (3). Description of premises.
 - (4). Verification.
 - (5). Objections and waiver of defects.
25. — Plea or answer and subsequent pleadings.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Necessity for special plea or answer.
 - (3). Requisites and sufficiency.
26. — Demurrer.

180. FORFEITURES**I. CIVIL LIABILITY.(Cont'd)**

- 27. — Amendment.
- 28. — Issues, proof, and variance.
- 29. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Admissibility of evidence of title.
 - (4). Weight and sufficiency.
- 30. Damages.
 - (1). In general.
 - (2). Elements in general.
 - (3). Measure of damages in general.
 - (4). Exemplary damages.
 - (5). Double or treble damages.
 - (6). Right of defendant to damages.
- 31. Trial.
 - 31.1. — In general.
- 32. — Scope of inquiry and powers of court.
- 33. — Mode and conduct in general.
- 34. — Questions for jury.
- 35. — Instructions.
- 36. — Verdict and findings.
- 37. New trial.
- 38. Judgment.
 - (.5). In general.
 - (1). Necessity and effect.
 - (2). Requisites, sufficiency, and validity in general.
 - (3). Conformity to pleadings, proof, and verdict.
 - (4). Default judgment.
 - (5). Amendment and setting aside.
- 39. Execution and enforcement of judgment.
- 40. — In general.
- 41. — Restitution.
- 42. Review.
 - 42.1. — In general.
- 43. — Appeal and trial de novo.
 - (.5). In general.
 - (1). Jurisdiction.
 - (2). Decisions reviewable.
 - (3). Presentation and reservation in lower court of grounds of review.
 - (4). Requisites and proceedings for transfer of cause.

I. CIVIL LIABILITY.(Cont'd)

- (5). Record.
- (6). Dismissal.
- (7). Review, and determination and disposition of cause.
- (8). Liabilities on bonds.
- 44. — Certiorari.
- 45. — Supersedeas and stay of proceedings.
- 46. — Restitution or re-restitution on reversal.
- 47. Costs.
- 48. Wrongful dispossession.

II. CRIMINAL RESPONSIBILITY.

- 49. Disseisin as a public offense in general.
- 50. Statutory provisions.
- 51. Nature and elements of forcible entry.
- 52. Nature and elements of forcible or other unlawful detainer.
- 53. Defenses.
- 54. Persons liable.
- 55. Persons who may prosecute.
- 56. Inquisition or other summary proceeding.
- 57. Prosecution by indictment or information.
- 58. Sentence and punishment.
- 59. Restitution in criminal prosecutions.

180. FORFEITURES**SUBJECTS INCLUDED**

Loss of specific property, real or personal, as punishment for violation of law

Nature and scope of such punishment in general

Constitutional and statutory provisions relating thereto

In what cases, and as to what persons and property, and for what offenses forfeiture is imposed in general

Jurisdiction over and proceedings for condemnation of property as forfeited

Judgments or decrees therein and enforcement thereof, and review of proceedings

Effect of forfeiture

180. FORFEITURES

Rights of informers

Waiver or remission of forfeiture

Disposition of property forfeited

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**Bail bonds, recognizances, etc., forfeiture of,
see BAIL, RECOGNIZANCESCorporate charters, stock, etc., forfeiture of,
see CORPORATIONS AND BUSINESS
ORGANIZATIONSFranchises, forfeiture of, see FRANCHISES
and other specific topicsParticular offenses as grounds of forfeiture,
see CONTROLLED SUBSTANCES,
HOMESTEAD, INTERNAL REVENUE,
USURY, WAR AND NATIONAL
EMERGENCY, and other specific topicsPecuniary punishments, see PENALTIES,
FINESPrivate duties or obligations, forfeiture of
property or estates therein or rights under
contracts for breaches of, see CON-
TRACTS, PROPERTY III(C), REAL
PROPERTY CONVEYANCES, INSUR-
ANCE, and other specific topicsSeizures for enforcement of forfeitures, see
SEARCHES AND SEIZURES

I. NATURE OF FORFEITURE, ¶20–39.

II. GROUNDS OF FORFEITURE,
¶40–79.III. PROCEEDINGS FOR FORFEITURE,
¶80–149.IV. ACTIONS AND PROCEEDINGS AF-
TER FORFEITURE, ¶150–164.**I. NATURE OF FORFEITURE.**

20. In general.

21. Statutes and other regulations.

22. — In general.

23. — Validity.

(1). In general.

(2). Particular statutes and regulations.

24. — Construction and operation in gen-
eral.

(1). In general.

(2). Strict or liberal construction.

(3). Particular statutes and regulations.

25. — Retroactive or prospective opera-
tion.**I. NATURE OF FORFEITURE.(Cont'd)**

(1). In general.

(2). Particular statutes and regulations.

26. — Repeal.

27. Nature and purpose of forfeiture in gen-
eral.

28. Punitive or penal nature.

29. Forfeitures disfavored.

30. Discretionary or mandatory nature.

31. Relation to other remedies and concepts.

32. Operation and effect of forfeiture.

33. — In general.

34. — Time of taking effect; relation
back.

35. — Joint and several liability.

II. GROUNDS OF FORFEITURE.

40. In general.

41. Probable or reasonable cause.

42. — In general.

43. — Necessity of showing.

44. — Factors and standards of application
in general.45. — Relation to standard for search or
arrest.46. — Necessity of crime or conviction;
effect of acquittal.47. — Time frame for cause determina-
tion.

48. — Particular cases.

(1). In general.

(2). Motor vehicle crimes and regula-
tion.(3). Receiving or transporting contra-
band.(4). Racketeering and criminal organi-
zations.(5). Money laundering and reporting
requirements.(6). Regulation of drugs, medicine,
and medical devices.

(7). Regulation of food and drink.

(8). Intoxicating liquors.

(9). Fraud and misrepresentation.

(10). Mail and wire fraud.

(11). Gambling and lotteries.

(12). Animals in general.

(13). Fish and game.

(14). Environmental regulation.

180. FORFEITURES**II. GROUNDS OF FORFEITURE.(Cont'd)**

- (15). Obscenity.
- (16). Weights and measures.
- (17). Firearms and other weapons of-fenses.
- (18). Copyrights.
- 49. Property subject to forfeiture.
- 50. — In general.
- 51. — Property connected to, involved in, or facilitating wrongdoing in general.
- 52. — Per se or derivative contraband in general.
- 53. — Money, funds, and accounts in general.
- 54. — Real property; buildings.
- 55. — Personal property in general.
- 56. — Automobiles and other vehicles; means of transport.
- 57. — Weapons.
- 58. — Funds and property held by third party.
- 59. — Tainted or untainted determinations; commingled funds.
- 60. — Substitute assets.
- 61. — Limitation of amount in general.
- 62. — Amount, particular cases.
- 63. — Excessiveness and proportionality.
 - (1). In general.
 - (2). Particular forfeitures.
- 64. — Legal fees and funds therefor.
- 65. Defenses to forfeiture.
- 66. — In general.
- 67. — Property wrongfully seized or obtained by authorities.
- 68. — Lack of knowledge or consent; innocent owner.
 - (1). In general.
 - (2). Particular cases.
- 69. Rights of third persons.
- 70. — In general.
- 71. — Occupants or lessees.
- 72. — Co-owners.
- 73. — Creditors, lienholders, and mortgagees.
- 74. — Purchasers.

III. PROCEEDINGS FOR FORFEITURE.

- 80. In general.
- 81. Civil, criminal, or quasi-criminal nature.

III. PROCEEDINGS FOR FORFEITURE.(Cont'd)

- 82. In personam or in rem nature.
- 83. Federal/state issues; adoption doctrine.
- 84. Representation by counsel.
- 85. Disposition of property pending forfeiture.
- 86. — In general.
- 87. — Government's right to seizure or restraint.
- 88. — Return or release of property.
- 89. — Bonds and other security.
- 90. — Costs related to property.
- 91. — Funds generated by property.
- 92. — Proceedings.
- 93. Jurisdiction and venue.
- 94. Standing; parties.
- 95. — In general.
- 96. — Particular cases.
- 97. — Waiver and disentitlement; fugitives.
- 98. Notice and process.
- 99. Time for proceedings.
- 100. Pleadings and claims.
- 101. Evidence.
- 102. — In general.
- 103. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Standing.
 - (3). Defenses.
- 104. — Admissibility.
 - (1). In general.
 - (2). Exclusionary rule.
- 105. — Weight and sufficiency.
 - (1). In general.
 - (2). Standard of proof in general.
 - (3). Direct or circumstantial evidence.
 - (4). Hearsay evidence.
 - (5). Defenses.
 - (6). Particular cases.
- 106. Trial or hearing.
- 107. — In general.
- 108. — Right to or necessity of hearing; waiver.
- 109. — Procedure in general.
- 110. — Questions of law or fact.
- 111. — Instructions.
- 112. Determination and judgment.
- 113. — In general.
- 114. — Summary judgment.

180. FORFEITURES**III. PROCEEDINGS FOR FORFEITURE.(Cont'd)**

- 115. — Findings and conclusions.
- 116. — Reconsideration of or relief from judgment.
- 117. — Default judgment and relief therefrom.
- 118. — Operation and effect.
- 119. Review.
- 120. — In general.
- 121. — Jurisdiction and authority.
- 122. — Decisions reviewable.
- 123. — Right of review; standing.
- 124. — Preservation of error; plain error.
- 125. — Proceedings in general.
- 126. — Scope of review.
 - (1). In general.
 - (2). Plenary or de novo review.
 - (3). Presumptions and burden.
 - (4). Questions of fact and evidence.
 - (5). Harmless error.
- 127. — Determination.
 - (1). In general.
 - (2). Remand.
- 128. Further review.
- 129. Disposition of property not forfeited; interest.
- 130. Costs.

IV. ACTIONS AND PROCEEDINGS AFTER FORFEITURE.

- 150. In general.
- 151. Remission, relief, or mitigation.
- 152. — In general.
- 153. — Purpose, function, or nature of remedy.
- 154. — Mandatory or discretionary nature.
- 155. — Grounds and defenses.
 - (1). In general.
 - (2). Particular cases.
- 156. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and authority.
 - (3). Conditions precedent.
 - (4). Time for proceedings.
 - (5). Parties and standing.
 - (6). Pleading.
 - (7). Evidence.
 - (8). Hearing and determination.
 - (9). Further monetary relief; interest.

IV. ACTIONS AND PROCEEDINGS AFTER FORFEITURE.(Cont'd)

- (10). Review.
- 157. Disposition of forfeited property or proceeds.
- 158. — In general.
- 159. — Rights of informers.
- 160. — Rights of victims and injured parties.
- 161. — Rights of spouses, family members, and heirs.
- 162. — Rights of governmental entities and officers.
- 163. — Other particular cases.
- 164. — Proceedings and review.

181. FORGERY**SUBJECTS INCLUDED**

Falsely and fraudulently making or materially altering instruments in writing, other than circulating notes issued as money or other government obligations or securities, and uttering such forged instruments

Nature and elements of the crimes of forgery, uttering and publishing forged instruments, etc. and degrees thereof

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Civil rights and liabilities—

Alterations of instruments in writing in general, see ALTERATION OF INSTRUMENTS

Banks paying, discounting, etc., forged or altered paper, see FINANCE, BANKING, AND CREDIT IV(J)2

Parties to and holders of forged or altered instruments, see COMMERCIAL PAPER, BONDS, and other specific topics

181. FORGERY

Counterfeit coin or other money or government securities, offenses of making, passing, etc., see COUNTERFEITING

Interstate transportation of forged securities, etc., see RECEIVING STOLEN GOODS

1. Nature of offense in general.
2. Statutory provisions.
3. Elements of offenses.
4. — In general.
5. — Intent.
6. — Want of authority.
7. — Nature of instrument.
 - (1). In general.
 - (2). Negotiable instruments.
 - (3). Order for payment of money.
 - (4). Order for delivery of goods.
 - (5). Certificates and warrants.
8. — Name or signature used.
9. — Making false instrument or signature.
10. — Alteration or destruction of instrument.
11. — Similitude of false instrument or signature to genuine.
12. — Apparent legal efficacy or operation of instrument.
 - (.5). In general.
 - (1). Compliance with statutory requirements and invalidity appearing from face of instrument.
 - (2). Legal operation of instrument.
 - (3). Legal capacity of apparent maker, and obligation as between apparent parties to instrument.
 - (4). Possibility of prejudice from or deception by instrument.
 - (5). Absence of seal, or of revenue stamp, and uncertainty.
13. — Fraudulent use of instrument.
14. — Injury from forgery.
15. False entries or records, and alteration of entries or records.
16. Uttering or publishing forged instrument.
17. Possession of forged instrument or of means of forgery.
18. Degrees.
19. Attempts.
20. Defenses.
21. Persons liable.
22. Jurisdiction.
23. Venue.
24. Preliminary proceedings in prosecution.
25. Indictment or information.
26. — In general.
27. — Intent.
28. — Description of or setting forth instrument.
 - (1). In general.
 - (2). Copy, tenor, or facsimile of instrument.
 - (3). Purport of instrument.
 - (4). Designation of instrument by name.
 - (5). Instrument lost, defaced, or in possession of prisoner.
29. — Facts extrinsic to instrument in general.
 - (1). In general.
 - (2). How instrument might defraud.
 - (3). Explanation of defects of expression.
 - (4). Authority of apparent makers or parties to instrument.
 - (5). Description of person defrauded.
30. — Making or alteration of instrument.
31. — Falsification of entries or records.
32. — Uttering or publishing forged instrument.
33. — Possession of forged instrument or of means of forgery.
34. — Issues, proof, and variance.
 - (1). In general.
 - (2). Variance between allegations and proof in general.
 - (3). Variance as to indorsements and signatures.
 - (4). Variance as to intent to defraud.
 - (5). Variance as to manner in which offense was committed.
 - (6). Variance as to form of instrument.
 - (7). Variance as to terms, conditions, and clauses in general.
 - (9). Variance as to abbreviations, misspelling, clerical errors, or dates.
35. Presumptions and burden of proof.
36. Admissibility of evidence.
37. — In general.
38. — Intent and knowledge.

181. FORGERY

- 39. — Making or alteration of instrument, signature, or entry.
- 40. — Uttering or publishing forged instrument.
- 41. — Possession of forged instrument or of means of forgery.
- 42. — Incriminating circumstances.
- 43. — Matters of defense.
- 44. Weight and sufficiency of evidence.
 - (.5). In general.
 - (1). Fraudulent intent and knowledge.
 - (2). Making false instrument or signature and forged character of paper.
 - (3). Uttering false instrument and alteration of instrument.
- 45. Trial.
- 46. — In general.
- 47. — Questions for jury.
- 48. — Instructions.
- 49. — Verdict.
- 51. Sentence and punishment.

183. FRANCHISES**SUBJECTS INCLUDED**

Nature and incidents of special rights, privileges and powers which can be exercised legally only under a grant from the government

Exercise and protection of franchises in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate franchises, see CORPORATIONS AND BUSINESS ORGANIZATIONS and specific topics relating to particular kinds of corporations

Licenses to engage in occupation, see LICENSES and specific topics

Particular kinds of business or occupations, franchises necessary or incident to, see ELECTRICITY and other specific topics

Private contracts authorizing the conduct of businesses, see CONTRACTS

Statutory regulation of such contractual arrangements, see ANTITRUST AND TRADE REGULATION

Validity of grants of exclusive privileges, see ANTITRUST AND TRADE REGULATION

- 1. Nature of right.
- 2. Grants in general.
- 3. Extent and exercise of rights.
- 4. Exclusiveness and conflicting grants.
- 5. Obstruction or disturbance.
- 6. Transfer or incumbrance.
- 7. — In general.
- 8. — Sale or assignment.
- 9. — Lease.
- 10. — Mortgage.
- 11. Duration and termination in general.
- 12. Forfeiture.
- 12.1. — In general.
- 13. — Grounds.
- 14. — Waiver and estoppel.
- 15. — Proceedings to enforce.
- 16. — Operation and effect.

184. FRAUD**SUBJECTS INCLUDED**

Deception or perversion of the truth by statements, acts or omissions, intended or operating to injure another by depriving him of any property or right or obtaining any promise or unlawful or unfair advantage, not constituting or not regarded as a tort or offense of any distinct class

Evidence relating thereto

Nature and extent of liability for such fraud in general

Actions for deceit and like actions for damages for fraud

Criminal responsibility for fraud in general, and prosecution and punishment thereof as a public offense

184. FRAUD

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Cancellation of instruments in writing, fraud as ground for, see CANCELLATION OF INSTRUMENTS

Conspiracies to defraud, see CONSPIRACY

Conveyances fraudulent as to creditors, purchasers, etc., see FRAUDULENT CONVEYANCES

Effect of fraud on conveyances, contracts and other transactions, see CONTRACTS, COMMERCIAL PAPER, REAL PROPERTY CONVEYANCES, INSURANCE, and other specific topics

Frauds, statute of, requirements and operation, see FRAUDS, STATUTE OF

Limitations, suspension on ground of fraud, see LIMITATION OF ACTIONS

Particular offenses involving fraud, see FALSE PRETENSES and other specific topics

Particular personal relations, fraud in transactions between persons occupying, see ACCOUNTANTS, ANNUITIES, ATTORNEYS AND LEGAL SERVICES, BROKERS, MARRIAGE AND COHABITATION, INSURANCE, PRINCIPAL AND AGENT, and other specific topics

Particular remedies in actions, fraud as ground for, see ARREST, CREDITORS' REMEDIES, PRETRIAL PROCEDURE, and other specific topics

Reformation of instruments in writing, fraud as ground for, see REFORMATION OF INSTRUMENTS

**I. DECEPTION CONSTITUTING FRAUD,
AND LIABILITY THEREFOR,**

⊖1–30.

II. ACTIONS, ⊖31–67.

(A) RIGHTS OF ACTION AND DEFENSES, ⊖31–38.

(B) PARTIES, ⊖39.

(C) PLEADING, ⊖40–49.

(D) EVIDENCE, ⊖50–58.

(E) DAMAGES, ⊖59–62.

(F) TRIAL, ⊖63–66.

(G) JUDGMENT, ⊖67.

**III. CRIMINAL RESPONSIBILITY,
⊖68–69.****I. DECEPTION CONSTITUTING FRAUD,
AND LIABILITY THEREFOR.**

1. Nature of fraud.

1.5. What law governs.

2. Elements of actual fraud.

3. — In general.

4. — Intent.

4.5. — Deceptive statements or acts.

5. Elements of constructive fraud.

6. — In general.

7. — Fiduciary or confidential relations.
Interference with fiduciary or confidential relationship,
see TORTS ⊖204.

8. Fraudulent representations.

9. — In general.

10. — Matters of fact or of law.

11. — Matters of fact or of opinion.

(1). In general.

(2). Value.

12. — Existing facts or expectations or promises.

13. — Falsity and knowledge thereof.

(.5). In general.

(1). Falsity of representations.

(2). Knowledge of defendant.

(3). Statements recklessly made; negligent misrepresentation.

14. Fraudulent warranties.

15. Fraudulent concealment.

16. — In general.

17. — Duty to disclose facts.

18. Materiality of matter represented or concealed.

19. Reliance on representations and inducement to act.

20. — In general.

21. — Persons who may rely on representations.

22. — Duty to investigate.

(1). In general.

(2). Inducement not to investigate.

23. — Relations and means of knowledge of parties.

24. Acts induced by fraud.

25. Injury and causation.

26. Interest of or benefit to defendant.

27. Fraudulent representations or concealment as to particular facts.

28. Fraud in particular transactions or for particular purposes.

184. FRAUD**I. DECEPTION CONSTITUTING FRAUD,
AND LIABILITY THEREFOR.(Cont'd)**

- 29. Persons entitled to sue.
- 30. Persons liable.

II. ACTIONS.**(A) RIGHTS OF ACTION AND DEFENSES.**

- 31. Nature and form of remedy.
- 32. Effect of existence of remedy by action on contract.
- 33. Grounds of action.
- 34. Conditions precedent.
- 35. Waiver of right of action.
- 36. Defenses.
- 37. Jurisdiction and venue.
- 38. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

(B) PARTIES.

- 39. In general.

(C) PLEADING.

- 40. In general.
- 40.1. — In general.
- 41. Allegations of fraud in general.
- 42. Intent.
- 43. Statements, acts, or conduct constituting fraud.
- 44. Contract, transaction, or circumstances connected with fraud.
- 45. Falsity of representations and knowledge thereof.
- 46. Reliance and inducement and action thereon.
- 47. Damage from fraud.
- 48. Matters of defense.
- 49. Issues, proof, and variance.

(D) EVIDENCE.

- 50. Presumptions and burden of proof.
- 51. Admissibility.
- 52. — In general.
- 53. — Falsity of representations.
- 54. — Intent and knowledge.
- 55. — Nature and circumstances of fraud.
- 56. — Reliance on representations and inducement to act.
- 57. — Damages.
- 58. Weight and sufficiency.

II. ACTIONS.(Cont'd)

- (1). In general.
- (2). Falsity of representations and knowledge thereof.
- (3). Intent.
- (4). Reliance on representations and inducement to act.

(E) DAMAGES.

- 59. Measure in general.
- (1). In general.
- (2). Difference between actual and represented value.
- (3). Difference between value and price paid.
- (4). Nominal damages.
- 60. Elements of compensation.
- 61. Exemplary.
- 62. Amount awarded.

(F) TRIAL.

- 63. Mode and conduct of trial in general.
- 64. Questions for jury.
- (1). In general.
- (2). Intent.
- (3). Falsity of representations and knowledge thereof.
- (4). Materiality of matter represented or concealed.
- (5). Reliance on representations and inducement to act.
- 65. Instructions.
- (1). In general.
- (2). Intent.
- (3). Falsity of representations and knowledge thereof.
- (4). Reliance on representations and inducement to act.
- 66. Verdict and findings.

(G) JUDGMENT.

- 67. In general.

III. CRIMINAL RESPONSIBILITY.

- 68. Offenses in general.
- 68.5. False or deceptive advertising.
- 68.10. Fraud on government.
- (1). In general; false statements or entries.
- (2). Knowledge, intent, and purpose.

185. FRAUDS, STATUTE OF**III. CRIMINAL RESPONSIBILITY.(Cont'd)**

- (3). Department or agency of government; jurisdiction.
- (4). Materiality and effect.
- 69. Prosecution and punishment.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Questions for jury.
 - (7). Instructions.

185. FRAUDS, STATUTE OF**SUBJECTS INCLUDED**

Statutory provisions making a writing necessary to the creation, assignment or surrender of estates in land, the bringing of actions on promises, agreements or representations, or the validity of contracts

Operation and effect of such provisions in general

Requisites and sufficiency of the instrument, agreement, memorandum or note in writing required by statute, or of the acceptance and receipt of goods or giving of earnest or part payment therefor required on contracts for sale, etc.

Effect of part or full performance in general

Pleading the statute and evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Limitation of actions, necessity of writing to bar, see **LIMITATION OF ACTIONS**

Parol evidence as to contracts, see **EVIDENCE**

Particular contracts and transactions, necessity and sufficiency of writing independently of statute or under special modern statutes, see **BROKERS, CONTRACTS, GIFTS, LANDLORD AND TENANT** and other specific topics

Specific performance of contract despite bar by statute of frauds, and partial or full performance as ground for such relief, see **SPECIFIC PERFORMANCE**

Trusts, necessity of writing to create, see **TRUSTS**

I. IN GENERAL, ¶1.1–6.

(A) **IN GENERAL**, ¶1.1–1.8.

(B) **AGREEMENTS IN CONSIDERATION OF MARRIAGE**, ¶1.9–6.

II. PROMISES BY EXECUTORS OR ADMINISTRATORS, ¶7–12.**III. PROMISES TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER, ¶13–36.****IV. REPRESENTATIONS, ¶37–42.****V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR OR DURING LIFETIME, ¶43–54.5.****VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN, ¶55–80.****VII. SALES OF PERSONAL PROPERTY, ¶81–96.**

(A) **CONTRACTS WITHIN STATUTE**, ¶81–86.

(B) **ACCEPTANCE OF PART OF PROPERTY**, ¶87–91.

(C) **GIVING EARNEST OR PART PAYMENT**, ¶92–96.

VIII. REQUISITES AND SUFFICIENCY OF WRITING, ¶97–118.**IX. OPERATION AND EFFECT OF STATUTE, ¶122.5–144.****X. PLEADING, ¶145–156.****XI. OBJECTIONS TO EVIDENCE OF ORAL CONTRACT, ¶157.****XII. EVIDENCE, ¶158.****XIII. TRIAL, ¶159–161.****XIV. REVIEW, ¶162.****I. IN GENERAL.****(A) IN GENERAL.**

1.1. In general.

1.2. Purpose.

1.3. Statute as instrument of fraud.

1.4. What law governs.

1.5. Construction of statute in general.

1.6. Retroactive operation of statute.

1.7. Miscellaneous particular cases, in general.

1.8. Credit agreements.

185. FRAUDS, STATUTE OF**(B) AGREEMENTS IN CONSIDERATION
OF MARRIAGE.**

- 1.9. In general.
- 1.10. Statutory provisions.
- 2. Nature and subject of agreement in general.
- 3. Mutual promises to marry.
- 4. Marriage settlements.
- 5. Marriage as consideration.
- 6. Marriage as acceptance of promise.

**II. PROMISES BY EXECUTORS
OR ADMINISTRATORS.**

- 7. Statutory provisions.
- 8. Nature of liability of decedent.
- 9. Promise to answer in general.
- 10. Promises before issue of letters.
- 11. Answering out of promisor's own estate.
- 12. Effect of discharge of decedent's estate.

**III. PROMISES TO ANSWER FOR DEBT,
DEFAULT OR MISCARRIAGE OF
ANOTHER.**

- 13. Statutory provisions.
- 14. Nature of debt, default, or miscarriage.
- 15. Liability of original or principal debtor.
- 16. Pre-existing liability of promisor.
- 17. Promise to answer in general.
- 18. Promise to debtor to discharge debt.
 - (1). In general.
 - (2). Promises founded on consideration in general.
 - (3). Assumption of debt in consideration of transfer of property.
 - (4). Promises on transfer of partnership property.
- 19. Promise to indemnify.
- 20. — In general.
- 21. — Coexisting liability of another.
- 22. — Contracts of insurance.
- 23. Original or collateral promise in general.
 - (1). In general.
 - (2). Construction contracts.
 - (3). Contracts to pay for property sold.
 - (4). Contracts to pay for services and expenses.
- 24. Intent of parties.
- 25. Obligation of promisor independent of liability of principal.
- 26. Credit given to promisor.

**III. PROMISES TO ANSWER FOR DEBT,
DEFAULT OR MISCARRIAGE OF
ANOTHER.(Cont'd)**

- (1). In general.
- (2). Credit given to principal debtor.
- (3). Decisions as to whom credit was in fact given.
- (4). Promises made to secure credit for promisor's contractor.
- (5). Delivery or performance on request of promisor after refusal of credit to principal.
- (6). Promises on behalf of persons ill or injured.
- (7). Charges on creditor's books.
- 27. Promise to make, accept, or indorse bill or note.
- 28. Promise on transfer of bill or note and mortgage.
- 29. Guaranty of factor or agent del credere.
- 30. Discharge of original debtor.
- 31. — In general.
- 32. — Novation.
- 33. New consideration beneficial to promisor.
 - (1). In general.
 - (2). What is sufficient consideration in general.
 - (3). Forbearance by creditor.
- 34. Promise to apply or pay from property of debtor.
- 35. Release or transfer of lien or security.
- 36. Purchase of debt.

IV. REPRESENTATIONS.

- 37. Statutory provisions.
- 38. Nature and subject-matter.
- 39. Intent or purpose.
- 40. Scope and effect.
- 41. Effect of promise to answer for debt.
- 42. Effect of fraud.

**V. AGREEMENTS NOT TO BE PERFORMED
WITHIN ONE YEAR OR DURING
LIFETIME.**

- 43. Statutory provisions.
- 44. Nature and subject-matter.
 - (1). In general.
 - (2). Contracts creating partnership or agency.
 - (3). Contracts of employment.

185. FRAUDS, STATUTE OF**V. AGREEMENTS NOT TO BE PERFORMED
WITHIN ONE YEAR OR DURING
LIFETIME.(Cont'd)**

- (4). Contracts of sale, leasing, or hiring.
- (5). Contracts in restraint of trade.
- 45. Stipulations as to time.
 - (.5). In general.
 - (1). Decisions as to whether contract is to be performed within one year.
 - (2). Necessity of stipulation.
 - (3). Restatement of contract within the year.
- 46. Intent of parties.
- 47. Probability of performance and expectation of parties.
- 48. Possibility of performance.
- 49. — In general.
- 50. — Dependent on contingency.
 - (1). In general.
 - (2). Contracts continuing for life or terminating at death.
- 51. Possibility of discharge or other termination without performance.
- 52. Time of actual performance or termination.
- 53. Commencement of period.
- 54. Sufficiency of performance possible within year.
- 54.5. Agreements not to be performed during lifetime of promisor.

**VI. REAL PROPERTY AND ESTATES
AND INTERESTS THEREIN.**

- 55. Statutory provisions.
- 56. Creation of estates or interests in general.
 - (1). In general.
 - (2). Parol evidence to establish title.
 - (3). Agreements in relation to timber.
 - (4). Agreements in relation to incumbrances and liens.
 - (5). Agreements relating to purchase or sale of land.
 - (6). Agreements relating to leases.
 - (7). Agreements between husband and wife as to rights in land.
 - (8). Agreements as to mining claims.
 - (9). Formation of partnership or association.

**VI. REAL PROPERTY AND ESTATES AND
INTERESTS THEREIN.(Cont'd)**

- 57. Creation of leases.
- 58. — In general.
 - (1). In general.
 - (2). Extensions and renewals.
- 59. — Statutory exceptions.
- 60. Creation of easements.
 - (1). In general.
 - (2). In relation to water rights.
- 61. Creation of licenses.
- 62. Assignment, grant, or surrender of existing estates, interests, or terms.
- 63. — In general.
 - (1). In general.
 - (2). Interests created by leases.
 - (3). Interests created by easements.
 - (4). Interests created by contracts of sale.
 - (5). Interests created by mortgages, liens, or trusts.
 - (6). Assignment of dower or interest of heir.
 - (7). Dedication.
- 64. — Act or operation of law.
- 65. — Redelivery, destruction, or alteration of deed.
- 66. — Equitable mortgage by deposit of title deeds.
- 67. — Assignment of mortgage.
- 68. — Partition.
- 69. — Exchange.
- 70. — Establishment of boundary.
- 71. Contracts for sale.
- 71.1. — In general.
- 72. — Nature of property.
 - (1). In general.
 - (2). Crops.
 - (3). Timber.
 - (4). Improvements and fixtures.
- 73. — Interest in or concerning property.
- 74. — Nature of contract in general.
 - (1). In general.
 - (2). Promises to reconvey.
 - (3). Contracts to transfer mortgaged property or interests therein.
 - (4). Contract to support grantor.
- 75. — Contracts to adopt or devise.
- 76. — Partnership contracts and lands.

185. FRAUDS, STATUTE OF**VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN.(Cont'd)**

- 77. — Sales by auction.
- 78. — Judicial sales.
- 79. — Possession under contract.
- 80. — Receipt of purchase money.

VII. SALES OF PERSONAL PROPERTY.**(A) CONTRACTS WITHIN STATUTE.**

- 81. Statutory provisions.
- 82. Nature of property.
- 83. Existence and condition of goods.
- 84. Nature of contract.
- 85. Nature and amount of price.
- 86. Separate articles included in same transaction.

(B) ACCEPTANCE OF PART OF PROPERTY.

- 87. Statutory provisions.
- 88. Time for acceptance and receipt.
- 89. Acceptance in general.
 - (1). In general.
 - (2). Necessity.
 - (3). Sufficiency in general.
 - (4). Delivery to carrier.
- 90. Delivery and receipt.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Delivery to carrier.
 - (4). Delivery of part of goods.
- 91. Quantity of goods.

(C) GIVING EARNEST OR PART PAYMENT.

- 92. Statutory provisions.
- 93. Time for giving or making.
- 94. Earnest.
- 95. Part payment.
 - (1). In general.
 - (2). Agreement to credit seller's account.
- 96. Tender not accepted.

VIII. REQUISITES AND SUFFICIENCY OF WRITING.

- 97. Statutory provisions.
- 98. Creation or conveyance of estates or interests in real property.
- 98.1. — In general.
- 99. — Nature and form of instrument.

VIII. REQUISITES AND SUFFICIENCY OF WRITING.(Cont'd)

- 100. — Contents of instrument.
- 101. — Signature in general.
- 102. — Signature by agent.
- 103. Nature and form of memorandum in general.
 - (1). In general.
 - (2). Oral acceptance of written offer.
 - (3). Public records.
 - (5). Pleadings.
- 104. Time of making memorandum.
- 105. Contents of memorandum.
- 106. — In general.
 - (1). In general.
 - (2). Agreements relating to land.
- 107. — Designation and description of parties.
 - (1). In general.
 - (2). Necessity.
- 108. — Statement of consideration.
 - (1). In general.
 - (2). Agreements in consideration of marriage.
 - (3). Notes and bonds, undertakings, and promises to answer for another.
 - (4). Agreements relating to land.
 - (5). Sales of goods.
- 109. — Subject-matter in general.
- 110. — Description of lands.
 - (.5). In general.
 - (1). Sufficiency in general.
 - (2). Designation as adjoining other lands.
 - (3). Designation by street and number.
 - (4). Local appellation.
- 111. — Description of goods.
- 112. — Statement of price.
- 113. — Statement of terms and conditions.
 - (1). In general.
 - (2). Necessity that writing show all the terms.
 - (3). Sufficiency.
- 114. Signature of memorandum.
- 115. — In general.
 - 115.1. — Necessity.
 - 115.2. — Sufficiency in general.

185. FRAUDS, STATUTE OF**VIII. REQUISITES AND SUFFICIENCY
OF WRITING.(Cont'd)**

- 115.3. — Sufficiency of signature by one party only.
 - (1). In general.
 - (2). Agreements relating to land.
- 115.4. — Position of signature.
- 116. — By agent.
 - (.5). In general.
 - (1). Signature in name of agent.
 - (3). Necessity that agent's authority be in writing in general.
 - (5). Necessity that agent's authority in agreements relating to land be in writing.
 - (6). Agency for both parties.
 - (7). Memorandum by auctioneer.
 - (8). Sufficiency of authority.
 - (9). Necessity for disclosing agency.
 - (10). Ratification of agent's contract.
- 117. Delivery of memorandum.
- 118. Separate writings.
 - (1). In general.
 - (2). Writings connected by internal reference.
 - (3). Correspondence.
 - (4). Letters and other documents.
 - (5). Parol evidence to connect writings.

IX. OPERATION AND EFFECT OF STATUTE.

- 122.5. Operation as to rights or remedies in general.
- 123. Operation as tenancy from year to year, month to month, or at will, of estate or interest created without writing.
 - (.5). In general.
 - (1). Estate at will.
 - (2). Tenancy from year to year.
 - (3). Tenancy from month to month.
- 124. Validity of conveyances without deed or note in writing.
- 125. Validity and enforcement of contracts in general.
 - (1). In general.
 - (2). Damages for breach of parol contract.
 - (3). Contracts treated as void or voidable.
- 126. Promise to reduce agreement to writing.

**IX. OPERATION AND EFFECT
OF STATUTE.(Cont'd)**

- 127. Writing subsequent to oral agreement.
- 128. Effect on collateral or subsequent contracts.
- 129. Part performance in general.
 - (1). In general.
 - (2). Agreements not to be performed within one year.
 - (3). Agreements relating to real property in general.
 - (4). Possession in general.
 - (5). Payment of price in general.
 - (6). Performance of conditions.
 - (7). Improvements in general.
 - (8). Possession and payment.
 - (9). Possession and improvements.
 - (10). Payment and improvements.
 - (11). Possession, payment, and improvements.
 - (12). Necessity that part performance relied on be referable to contract.
- 130. Contracts in part within statute.
 - (1). In general.
 - (2). Contracts including real property.
- 131. Modification of contract.
 - (1). In general.
 - (2). Agreements changing time of performance.
- 132. Readiness and willingness to perform contract.
- 133. Contracts performed as to part within statute.
- 134. Contracts performed only as to part not within statute.
- 135. — In general.
- 136. — Agreements not to be performed within one year.
- 137. — Agreements relating to real property.
- 138. Contracts implied by law on part performance.
 - (1). In general.
 - (2). Recovery of money paid.
 - (3). Recovery for property transferred.
 - (4). Recovery for services.
 - (5). Recovery for improvements.
- 139. Contracts completely performed.
 - (1). In general.

185. FRAUDS, STATUTE OF**IX. OPERATION AND EFFECT OF STATUTE.(Cont'd)**

- (2). Agreements in consideration of marriage.
- (3). Promises to answer for another.
- (4). Agreements creating interests in land.
- (5). Agreements to convey land.
- (6). Agreements for sale of goods.
- 140. Discharge of contracts without performance.
- 141. Contracts as ground of defense.
- 142. Contracts as ground for equitable relief.
- 143. Persons to whom statute is available.
 - (1). In general.
 - (2). Creditors.
 - (3). Purchasers.
 - (4). Executors and heirs.
- 144. Waiver of bar of statute; estoppel.

X. PLEADING.

- 145. Pleading contract or transaction within statute.
 - 145.1. — In general.
- 146. — As cause of action in general.
- 147. — As ground of defense.
- 148. — Writing or other compliance with statute.
 - (1). In general.
 - (2). Presumptions arising from failure to allege compliance with statute.
- 149. — Matter in avoidance of bar of statute.
- 150. Demurrer raising defense.
 - (.5). In general.
 - (1). Sufficiency of demurrer to raise defense in general.
 - (2). Pleadings failing to allege compliance with statute.
 - (3). Pleadings showing noncompliance with statute.
- 151. Pleading statute as defense.
 - 151.1. — In general.
- 152. — Necessity.
 - (1). In general.
 - (2). Waiver by failure to plead.
 - (3). Effect of admitting existence of contract.

X. PLEADING.(Cont'd)

- 153. — Sufficiency of denials and allegations.
- 154. — Amendment to plead statute.
- 155. — Demurrer or reply to plea or answer.
- 156. Issues, proof, and variance.

XI. OBJECTIONS TO EVIDENCE OF ORAL CONTRACT.

- 157. In general.

XII. EVIDENCE.

- 158. In general.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Admissibility of evidence to aid memorandum.
 - (4). Sufficiency.

XIII. TRIAL.

- 159. Questions for jury.
- 160. Instructions.
- 161. Verdict and findings.

XIV. REVIEW.

- 162. In general.

186. FRAUDULENT CONVEYANCES**SUBJECTS INCLUDED**

- Transfers of property, and other transactions or proceedings, void as to creditors because intended or operating to delay, hinder, or defraud them
- Conveyances void as to subsequent purchasers for inadequacy of consideration, reservation of power to revoke them, etc.
- Bulk sales of stock in trade operating to defeat creditors
- Evidence relating thereto
- Rights, liabilities and remedies in general of the parties and those claiming under them,

186. FRAUDULENT CONVEYANCES

and of creditors and subsequent purchasers, more particularly actions to set aside such transfers

Criminal responsibility for such fraudulent transfers

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Assignments for benefit of creditors, fraud in, see **CREDITORS' REMEDIES** ¶1172

Bankrupt or insolvent laws, transfers fraudulent under, see **BANKRUPTCY, CREDITORS' REMEDIES** ¶1183

Chattel mortgages invalid as to creditors on grounds other than fraud, see **CHATTEL MORTGAGES**

Conveyances in fraud of—

Alimony, see **DIVORCE**

Dower, see **DESCENT AND DISTRIBUTION IV**

Spouse generally, see **MARRIAGE AND COHABITATION**

Corporate property, transfers invalid as against creditors, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Fraudulent disposition of property as ground for—

Arrest, see **ARREST**

Attachment, see **CREDITORS' REMEDIES**

Partners, transfers fraudulent as to partnership or individual creditors, see **PARTNERSHIP**

Proceedings by judgment creditors to subject property to their judgments, by action or supplementary proceedings, see **CREDITORS' REMEDIES**

**I. TRANSFERS AND TRANSACTIONS
INVALID, ¶1–171.**

(A) **GROUND OF INVALIDITY IN GENERAL, ¶1–22.**

(B) **NATURE AND FORM OF TRANSFER, ¶23–41.**

(C) **PROPERTY AND RIGHTS TRANSFERRED, ¶43–53.**

(D) **INDEBTEDNESS OF GRANTOR, ¶54–55.**

(E) **INSOLVENCY OF GRANTOR, ¶56–62.**

(F) **INTENT OF GRANTOR, ¶63–72.**

(G) **CONSIDERATION, ¶73–100.**

**I. TRANSFERS AND TRANSACTIONS
INVALID—Cont'd**

(H) **CONFIDENTIAL RELATIONS OF PARTIES, ¶101–108.**

(I) **RESERVATIONS AND TRUSTS FOR GRANTOR, ¶109–113.**

(J) **PREFERENCES TO CREDITORS, ¶114–130.**

(K) **RETENTION OF POSSESSION OR APPARENT TITLE BY GRANTOR, ¶131–154.**

(L) **KNOWLEDGE AND INTENT OF GRANTEE, ¶155–171.**

II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS, ¶172–204.

(A) **ORIGINAL PARTIES, ¶172–188.**

(B) **PURCHASERS FROM GRANTOR, ¶189–192.**

(C) **PURCHASERS FROM GRANTEE IN GENERAL, ¶193–195.**

(D) **BONA FIDE PURCHASERS FROM GRANTEE, ¶196–204.**

III. REMEDIES OF CREDITORS AND PURCHASERS, ¶205–328.

(A) **PERSONS ENTITLED TO ASSERT INVALIDITY, ¶205–225.**

(B) **REMEDIES ON GROUND OF NULLITY OF TRANSFER, ¶226–235.**

(C) **RIGHT OF ACTION TO SET ASIDE TRANSFER, AND DEFENSES, ¶237–244.**

(D) **JURISDICTION, ¶245–246.**

(E) **VENUE, ¶247.**

(F) **TIME TO SUE, ¶248–249.**

(G) **PARTIES, ¶250–257.**

(H) **PLEADING, ¶258–269.**

(I) **EVIDENCE, ¶270–302.**

(J) **DISCOVERY, ¶303.**

(K) **INJUNCTION (OBSOLETE, SEE INJUNCTION ¶1232), ¶304.**

(L) **RECEIVER, ¶305.**

(M) **TRIAL, ¶306–310.**

(N) **JUDGMENT OR DECREE, ¶311–315.**

(O) **EXECUTION AND ENFORCEMENT, ¶316–317.**

(P) **DISPOSITION OF PROPERTY OR PROCEEDS, ¶318–324.**

(Q) **REVIEW, ¶325–328.**

IV. CRIMINAL RESPONSIBILITY, ¶329–331.

**I. TRANSFERS AND TRANSACTIONS
INVALID.**

(A) GROUND OF INVALIDITY IN GENERAL.

1. Nature of fraud in transfers of property.

186. FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- 1.5. What law governs.
2. Statutory provisions.
- 2.1. — In general.
3. — Protection of creditors.
4. — Protection of subsequent purchasers.
5. — Construction in general.
6. — Retroactive operation.
7. Elements of fraud as to creditors.
8. — In general.
9. — Intent.
10. — Disposition of property.
11. — Effect of transaction to delay, hinder, or defraud.
12. Elements of fraud as to subsequent purchasers.
13. Badges of fraud.
14. — In general.
15. — Particular facts and circumstances.
16. — Conclusiveness and effect.
17. Transactions valid in inception.
18. Transactions fraudulent in part.
- 18.1. — In general.
19. — Fraud as to part of property.
20. — Fraud as to one or more grantees.
21. — Fraud in one or more separate conveyances or transactions.
22. Purging transaction of fraud.

(B) NATURE AND FORM OF TRANSFER.

23. Element or evidence of fraud in general.
24. Transactions subject to attack by creditors.
 - (1). In general.
 - (2). Transactions to hinder and delay creditors.
 - (3). Description of property, or consideration.
25. Transactions subject to attack by subsequent purchasers.
26. Absolute transfers.
 - (.5). In general.
 - (1). Sales and conveyances in general.
 - (2). Sales on credit.
 - (3). Absolute transfers intended as security.
27. Transfers as security.
28. Payment or satisfaction of liabilities.
29. Collusive legal proceedings in general.

**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- (1). In general.
- (2). Collusive judgment.
- (3). Preventing competitive bidding at judicial sale.
30. Confession of judgment.
31. Suffering levy of attachment or execution.
32. Suffering loss of property.
33. Release of right to conveyance, or reconveyance.
34. Rescission of contract.
35. Conditional purchases by debtor.
36. Loan or hire of chattels.
37. Placing or leaving property in possession of agent.
38. Purchase of exempt property or homestead.
39. Payment of premiums for insurance.
40. Conducting business in name of another.
41. Organization of corporation.

(C) PROPERTY AND RIGHTS TRANSFERRED.

43. Property subject to claims of creditors in general.
 - (1). In general.
 - (2). Property belonging to wife of debtor.
 - (3). Earnings of debtor or his minor children.
44. Interest of debtor in property in general.
45. Real property.
46. Personal property in general.
47. Stock in trade; bulk sales.
48. Rights in action.
49. Particular estates and interests.
 - (.5). In general.
 - (1). Property held in trust.
 - (2). Reconveyance of property fraudulently conveyed.
 - (3). Interest of debtor as tenant by curtesy.
50. Property or rights without pecuniary value.
51. Exempt property in general.
 - (1). In general.
 - (2). Earnings of debtor.
 - (3). Pension money.
 - (4). Life insurance.
52. Homestead.

186. FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- (1). In general.
 - (2). Necessity of selection.
 - (3). Homestead included in sale of other property.
 - (4). Proceeds of sale of homestead.
 - (5). Crops grown on homestead.
 - (6). Reversion of fee in homestead.
53. Property in other state or county.

(D) INDEBTEDNESS OF GRANTOR.

54. Indebtedness element of fraud.
- (1). In general.
 - (2). What constitutes indebtedness.
55. Assumption of debts by grantee.

(E) INSOLVENCY OF GRANTOR.

56. Solvency of grantor.
57. — In general.
- (1). In general.
 - (2). Liability as surety.
 - (3). Effect of transfer on solvency.
 - (4). Subsequent insolvency.
 - (5). Transactions between husband and wife.
58. — Retention of property sufficient to pay debts.
59. Security for debts of grantor.
60. Solvency of debtor liable primarily or jointly with grantor.
61. Insolvency element of fraud.
62. Inability to pay debts constituting insolvency.

(F) INTENT OF GRANTOR.

63. Intent to defraud pre-existing creditors.
64. — In general.
- (1). In general.
 - (2). Transactions between relatives, husband and wife, or parent and child.
65. — One or more creditors.
66. — Pending actions or other proceedings.
67. — Preventing sacrifice of property.
68. Intent to defraud subsequent creditors.
69. — In general.
- (1). In general.

**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- (2). Transactions between husband and wife or parent and child.
70. — Engaging in hazardous business.
71. Intent to defraud subsequent purchasers.
72. Good faith of grantor in conveyance procured by fraud of grantee.

(G) CONSIDERATION.

73. Want or insufficiency element of fraud.
- 73.1. — In general.
74. — As to creditors.
- (1). In general.
 - (2). Inadequacy or insufficiency of consideration.
 - (3). Voluntary conveyances.
 - (4). Subsequent creditors.
75. — As to subsequent purchasers.
76. Nature and adequacy.
- (1). In general.
 - (2). Valuable consideration.
 - (3). Fictitious consideration.
77. Sufficiency in general.
78. Executory character in general.
79. Future services.
80. Future support.
81. Future advances.
82. Promissory notes, acceptances, and indorsements.
83. Security to indorser, surety, or guarantor.
84. Assumption of liability.
85. Pre-existing liability.
86. — In general.
87. — Payment or satisfaction.
- (1). In general.
 - (2). Property in excess of debt.
 - (3). Satisfaction of trust.
88. — Security.
89. — Contingent liability.
90. — Invalidity of original transaction.
91. — Debt barred by limitation.
92. Moral obligation.
93. Natural affection in general.
94. Marriage and marriage settlements.
95. Transactions between husband and wife.
- (.5). In general.
 - (1). Want or insufficiency of consideration.

186. FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- (2). Nature, source, and sufficiency of consideration in general.
- (3). Conveyance to wife on consideration paid by husband.
- (4). Release of wife's dower.
- (5). Pre-existing liability.
- (6). Payment of pre-existing debts.
- (7). What constitutes indebtedness.
- (8). Repayment of money loaned by wife.
- (9). Payment of claims arising from husband's appropriation of wife's separate estate.
- (10). Laches of wife in asserting claim, and debts barred by limitations.
- (11). Postnuptial settlements.
- 96. Transactions between parent and child.
 - (.5). In general.
 - (1). Want or insufficiency of consideration.
 - (2). Nature, source, and sufficiency of consideration in general.
 - (3). Executory consideration.
 - (4). Pre-existing liability.
- 97. Family settlements.
- 98. Failure of consideration.
- 99. Partial insufficiency or failure.
 - (1). In general.
 - (2). Transactions between husband and wife.
 - (3). Transactions between parent and child.
- 100. Partial invalidity or illegality.
 - (.5). In general.
 - (1). Consideration partly fictitious.
 - (2). Consideration usurious in part.
 - (3). Consideration illegal in part.

(H) CONFIDENTIAL RELATIONS OF PARTIES.

- 101. Element or evidence of fraud.
- 102. Family relation in general.
- 103. Husband and wife.
- 103.1. — In general.
- 104. — Transactions in general.
 - (.5). In general.
 - (1). Relation as element of fraud.
 - (2). Validity in general.

**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- (3). Employment of husband as manager or agent for wife.
- (4). Donation of husband's or children's services.
- (5). Giving false credit to husband.
- (6). Purchases by wife in general.
- (7). Purchase of husband's property at private or public sale.
- 105. — Procuring conveyances from third persons.
- 106. — Making improvements on real property.
- 107. Parent and child.
- 108. Fiduciary and friendly relations.
- (I) RESERVATIONS AND TRUSTS FOR GRANTOR.**
- 109. Element or evidence of fraud.
- 110. Benefits reserved to grantor.
 - (1). In general.
 - (2). Employment of debtor.
 - (3). Purchase at execution sale for benefit of debtor.
 - (4). Support or care of grantor.
 - (5). Surplus or proceeds.
 - (6). Reservation of life estate.
- 111. Conveyances in trust for grantor.
- 112. Reservation of power to revoke.
- 113. Secret reservations or trusts.
 - (.5). In general.
 - (1). As element or evidence of fraud.
 - (2). What constitutes secret reservation.
 - (3). Absolute conveyance intended as security.

(J) PREFERENCES TO CREDITORS.

- 114. Element or evidence of fraud.
- 115. Right of debtor to prefer creditor.
 - (1). In general.
 - (2). Secret preferences.
 - (3). Delegation of power to prefer.
- 116. Statutory provisions.
- 117. Intent to defeat other creditors.
- 118. Preference of husband, wife, or other relatives.
 - (1). In general.
 - (2). Husband and wife.
 - (3). Parent and child.

186. FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- 119. Confidential relations of parties.
- 120. Nature and form of transaction in general.
 - (1). In general.
 - (2). Judgment notes including attorney fees.
- 121. Payment or satisfaction of debts.
- 122. Mortgages and other transfers as security.
 - (1). In general.
 - (2). Mortgages.
 - (3). Pledge.
- 123. Confession of judgment.
- 124. Suffering judgment by default.
- 125. Suffering levy of attachment or execution.
- 126. Nature of debts preferred in general.
- 127. Preference of secured debts.
- 128. Preference of sureties.
- 129. Preference of invalid debt.
- 130. Effect of illegal preference.

**(K) RETENTION OF POSSESSION OR
APPARENT TITLE BY GRANTOR.**

- 131. Element or evidence of fraud.
 - 131.1. — In general.
- 132. — As to creditors.
 - (1). In general.
 - (2). Property in possession of third person.
 - (3). Substitutes for change of possession.
- 133. — As to subsequent purchasers.
- 134. Statutory provisions.
 - 134.1. — In general.
- 135. — Change of possession.
- 136. — Record or filing of written instrument.
- 137. Nature of property transferred.
 - (.5). In general.
 - (1). Personalty in general.
 - (2). Choses in action.
 - (3). Real estate.
 - (4). Growing crops.
- 138. Nature and form of transaction in general.
- 139. Absolute sales and conveyances.
- 140. Public or judicial sales.

**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- 141. Conditional sales.
- 142. Reservation of power of disposition or use.
- 143. Possession as lessee.
- 144. Possession as bailee.
- 145. Possession as agent or employee.
- 146. Possession by husband, wife or other relatives.
 - (1). In general.
 - (2). Husband and wife.
 - (3). Parent and child.
- 147. Sufficiency of transfer of possession.
 - 147.1. — In general.
 - 147.2. — Constructive or symbolic delivery.
 - 147.3. — Acts of ownership.
 - 147.4. — Transfers of property in possession of third person.
- 148. — Possibility of delivery.
 - (1). In general.
 - (2). Growing crops.
- 149. — Immediate delivery.
 - (1). In general.
 - (2). Change of possession before levy.
- 150. — Actual and substantial change of possession.
- 151. — Visible and notorious possession.
- 152. — Exclusive or concurrent possession.
- 153. — Continued change of possession.
- 154. Failure to record or file instrument.
 - (1). In general.
 - (2). Substitutes for registration.
 - (3). Sufficiency of record.
 - (4). Withholding from record for benefit of debtor.

(L) KNOWLEDGE AND INTENT OF GRANTEE.

- 155. Elements of fraud in general.
- 156. Knowledge or actual notice.
 - (.5). In general.
 - (1). Necessity of actual notice or knowledge.
 - (2). What constitutes knowledge or actual notice in general.
- 157. Knowledge or notice implied from relation between parties.
 - (1). In general.
 - (2). Husband and wife.

186. FRAUDULENT CONVEYANCES**I. TRANSFERS AND TRANSACTIONS
INVALID.(Cont'd)**

- 158. Constructive notice, and facts putting on inquiry.
 - (.5). In general.
 - (1). What constitutes constructive notice.
 - (2). Facts putting on inquiry.
 - (3). Necessity of making inquiry.
- 159. Operation and effect of knowledge or notice.
 - (1). In general.
 - (2). Knowledge or notice of indebtedness or insolvency of grantor.
 - (3). Knowledge or notice of pendency of suits.
 - (4). Preferred creditors.
- 160. Payment of consideration after notice.
- 161. Participation in fraudulent intent.
- 162. — In general.
- 162.1. — Necessity of participation in fraudulent intent.
- 162.2. — What constitutes participation.
- 163. — Operation and effect.
- 164. Effect of good faith of grantee.
- 165. — In general.
- 166. — Mortgagees and pledgees.
- 168. — Nature and amount of consideration.
- 169. — Voluntary conveyances.
- 170. — Confidential relations of parties.
- 171. — Preferred creditors.

**II. RIGHTS AND LIABILITIES OF PARTIES
AND PURCHASERS.****(A) ORIGINAL PARTIES.**

- 172. Validity of transaction as between parties.
 - (1). In general.
 - (2). Right to impeach or rescind transaction as fraudulent.
 - (3). Conveyances induced by grantee.
- 173. Mutual rights and liabilities of parties.
 - 173.1. — In general.
- 174. — Title and rights to property.
 - (1). In general.
 - (2). Title subsequently acquired.
 - (3). Right to recover property fraudulently conveyed.

**II. RIGHTS AND LIABILITIES OF PARTIES
AND PURCHASERS.(Cont'd)**

- (4). Enforcement of agreement to reconvey.
- (5). Assertion of title after reconveyance.
- (6). Right to redeem property transferred as security.
- 175. — Conveyance or transaction as satisfaction of liability.
- 176. — Enforcement of executory contract.
 - (1). In general.
 - (2). Fraudulent mortgage.
 - (3). Enforcement of trust for grantor.
- 177. — Payment and recovery of consideration.
- 178. — Expenditures, liabilities, and damages incurred.
- 179. Rights and liabilities as to third persons in general.
 - (1). In general.
 - (2). Creditors of grantee.
 - (3). Between creditors of grantor and creditors of grantee.
- 180. Rights and liabilities of grantees as to creditors.
 - 180.1. — In general.
- 181. — Property and proceeds thereof.
 - (1). In general.
 - (2). Several fraudulent transactions.
 - (3). Right to growing crops.
 - (4). Proceeds of insurance on property conveyed.
 - (5). Application of proceeds to creditors' claims.
- 182. — Personal liabilities.
 - (1). In general.
 - (2). Extent of liability.
 - (3). Rents and profits.
 - (4). Liability as garnishee.
 - (5). Liability of grantee as trustee for creditors.
- 183. — Reimbursement of consideration and expenditures.
 - (.5). In general.
 - (1). Reimbursement of consideration.
 - (2). Care of property and expenses.
 - (3). Compensation for improvements.
 - (4). Security for consideration paid.

186. FRAUDULENT CONVEYANCES**II. RIGHTS AND LIABILITIES OF PARTIES
AND PURCHASERS.(Cont'd)**

- 184. — Claims and liens acquired by grantee.
 - (1). In general.
 - (2). Interest.
 - (3). Title subsequently acquired by grantee.
 - (4). Purchase of judgment against grantor.
- 185. Rights of grantees as bona fide purchasers.
- 186. — In general.
- 187. — Nature and extent of consideration.
- 188. Actions.

(B) PURCHASERS FROM GRANTOR.

- 189. Subsequent purchasers in general.
- 191. Mortgagees and pledgees.
- 192. Bona fide purchasers.

(C) PURCHASERS FROM GRANTEE IN GENERAL.

- 193. Rights and liabilities as to original parties.
- 194. Rights and liabilities as to creditors of original grantor.
- 195. Rights and liabilities as to purchasers from original grantor.

(D) BONA FIDE PURCHASERS FROM GRANTEE.

- 196. Subsequent purchasers in general.
- 197. Mortgagees and pledgees.
- 198. Good faith in general.
- 199. Notice.
- 200. Consideration.
- 201. Rights and liabilities.
 - 201.1. — In general.
- 202. — As to original parties.
- 203. — As to creditors of original grantor.
- 204. — As to purchasers from original grantor.

**III. REMEDIES OF CREDITORS
AND PURCHASERS.****(A) PERSONS ENTITLED TO ASSERT INVALIDITY.**

- 205. Necessity of prejudice.
- 206. Pre-existing creditors.
 - (1). In general.
 - (2). Who are pre-existing creditors.

**III. REMEDIES OF CREDITORS AND
PURCHASERS.(Cont'd)**

- 207. Subsequent creditors.
- 208. — In general.
- 209. — Effect of fraud as to pre-existing creditors.
- 210. — Knowledge or notice of fraudulent transaction.
- 211. Assignees.
- 212. Nature of claims of creditors.
- 213. — In general.
- 214. — On contracts.
- 215. — For torts.
- 216. — On demands not liquidated.
- 217. — On demands not matured.
- 218. — On contingent liabilities.
- 219. General creditors.
- 220. Secured creditors.
- 221. Judgment creditors.
- 222. Attaching creditors and officers.
- 223. Creditors purchasing at execution sales.
- 224. Subsequent purchasers and incumbrancers.
- 225. Estoppel and waiver.

**(B) REMEDIES ON GROUND OF
NULLITY OF TRANSFER.**

- 226. Application of property to claims of creditors in general.
- 227. Necessity of direct action.
- 228. Levy of attachment.
- 229. Garnishment.
- 230. Levy of execution.
- 231. Collateral attack on judgment or other proceeding as fraudulent.
- 232. Contest of claim to property levied on.
- 233. Establishment of lien as against grantees or others.
- 235. Accounting by grantee.

**(C) RIGHT OF ACTION TO SET ASIDE
TRANSFER, AND DEFENSES.**

- 237. Nature and form of remedy.
 - (1). In general.
 - (2). Remedy by suit in equity.
 - (3). Intervention to contest judgment against debtor as fraudulent.
- 239. Existence of other remedy.
 - (.5). In general.
 - (1). Remedy at law in general.

186. FRAUDULENT CONVEYANCES**III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)**

- (2). Resort to attachment, garnishment or execution.
- 240. Grounds of action in general.
- 241. Conditions precedent.
 - (1). In general.
 - (2). Necessity of judgment.
 - (3). Necessity of lien.
 - (4). Necessity of exhausting legal remedy in general.
 - (5). Execution and return.
- 242. Defenses.
 - (1). In general.
 - (2). Impeachment of creditor's judgment or claim.
- 243. Pendency of other action or proceeding.
- 244. Abatement on death of party.

(D) JURISDICTION.

- 245. Jurisdiction of cause of action.
- 246. Jurisdiction of persons and property involved.

(E) VENUE.

- 247. In general.

(F) TIME TO SUE.

- 248. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 249. Laches.

(G) PARTIES.

- 250. Plaintiffs.
- 251. — In general.
- 252. — Suing in behalf of all creditors.
- 253. — Joinder.
- 254. Defendants.
- 255. — In general.
 - (1). In general.
 - (2). Claimants or persons interested in property.
 - (3). Grantor as defendant.
 - (4). Grantee as defendant.
- 256. — Joinder.
- 257. Intervention and change of parties.

(H) PLEADING.

- 258. Bill, complaint, or petition.
- 258.1. — In general.

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- 259. — Form and requisites in general.
 - (1). In general.
 - (2). Right to sue.
- 260. — Indebtedness.
- 261. — Insolvency.
- 262. — Description of property.
- 263. — Fraudulent transaction.
 - (1). In general.
 - (2). Intent of grantor.
 - (3). Consideration.
 - (4). Knowledge and intent of grantee.
 - (5). Effect of transaction.
- 264. — Want or exhaustion of other remedy.
- 265. — Prayer for relief.
- 266. Plea or answer, and subsequent pleadings.
 - (1). In general.
 - (2). Denials and admissions.
 - (3). Disclaimer.
- 267. Pleading fraud as defense.
- 268. Amended and supplemental pleadings.
- 269. Issues and proof.
- 269.1. Variance.

(I) EVIDENCE.

- 270. Presumptions and burden of proof.
- 271. — In general.
 - 271.1. — Right to sue.
 - 271.2. — Burden of proof under pleadings.
 - 271.3. — Fraudulent character of transaction.
 - 271.4. — Rebuttal of presumptions.
- 272. — Insolvency.
- 273. — Intent of grantor in general.
- 274. — Intent to defraud subsequent creditors.
- 275. — Intent to defraud subsequent purchasers.
- 276. — Nature and circumstances of transaction in general.
- 277. — Consideration.
 - (1). In general.
 - (2). Transactions between relatives.
 - (3). Transactions between husband and wife.
- 278. — Relations between parties.

186. FRAUDULENT CONVEYANCES**III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)**

- (.5). In general.
- (1). Transactions between relatives.
- (2). Transactions between husband and wife.
- (3). Fiduciary relation.
- 279. — Reservations and trusts for grantor.
- 280. — Preferences to creditors.
- 281. — Retention of possession.
- 282. — Knowledge and intent of grantee.
- 283. — Good faith of purchasers.
- 284. — Effect of transaction.
- 285. Admissibility.
- 286. — In general.
 - (1). In general.
 - (2). Fraudulent instrument or conveyance.
 - (3). Pleadings as evidence.
 - (4). Prior or subsequent conduct of parties or persons interested.
 - (5). Separate conveyances or transactions.
 - (6). Reservations and trusts for grantor.
 - (7). Right to sue.
 - (8). Title or control of property.
- 287. — Indebtedness.
- 288. — Insolvency.
- 289. — Intent of grantor.
 - (1). In general.
 - (2). Prior or subsequent conduct of parties or persons interested.
- 290. — Nature and circumstances of transaction.
- 291. — Consideration.
 - (1). In general.
 - (2). Pre-existing liability.
 - (3). Books of account.
 - (4). Ability of grantee to purchase.
 - (5). Value of property or interest conveyed.
- 292. — Knowledge and intent of grantee.
- 293. — Good faith of purchaser.
- 294. Weight and sufficiency.
- 295. — In general.
- 295.1. — To show fraud.
- 295.2. — Circumstantial evidence.
- 295.3. — Subsequent conduct of grantor.

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- 295.4. — Right to sue.
- 296. — Indebtedness.
- 297. — Insolvency.
- 298. — Intent of grantor.
 - (.5). In general.
 - (1). Intent to defraud pre-existing creditors.
 - (2). Transactions between relatives.
 - (3). Transactions between husband and wife.
 - (4). Intent to defraud subsequent creditors.
- 299. — Nature and circumstances of transaction.
 - (1). In general.
 - (2). Mortgages and other transfers as security.
 - (3). Mortgage or judicial sale.
 - (4). Preferences to creditors.
 - (5). Conducting business in name of another.
 - (6). Procuring conveyance in name of another.
 - (7). Collusive actions.
 - (8). Secret reservations or trusts.
 - (9). Retention or change of possession.
 - (10). Fraudulent withholding of instrument from record.
 - (11). Transactions between relatives in general.
 - (12). Transactions between husband and wife.
 - (13). Transactions between parent and child.
- 300. — Consideration.
 - (1). In general.
 - (2). Recitals in instrument or conveyance.
 - (3). Source of consideration.
 - (4). Pre-existing indebtedness.
 - (5). Pre-existing indebtedness sustaining transactions between husband and wife.
 - (6). Ability of grantee to purchase.
 - (7). Value of property conveyed.
 - (8). As to subsequent creditors or purchasers.

186. FRAUDULENT CONVEYANCES**III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)**

301. — Knowledge and intent of grantee.
 (1). In general.
 (2). Participation in fraudulent intent.
 (3). Transactions between relatives.
 (4). Transactions between husband and wife.
302. — Good faith of purchaser.
- (J) DISCOVERY.**
303. In general.
- (K) INJUNCTION (OBSOLETE, SEE INJUNCTION \S 1232).**
- (L) RECEIVER.**
305. In general.
- (M) TRIAL.**
306. In general.
 307. Reference.
 308. Questions for jury; questions of law and fact.
 (1). In general.
 (2). Nature and form of transaction.
 (3). Insolvency.
 (4). Consideration.
 (5). Sufficiency of transfer of possession.
 (6). Knowledge and intent of grantee.
 (7). Submission to jury as determined by existence of particular facts.
 (8). Relationship of parties.
 (9). Retention or change of possession.
309. Instructions.
 (.5). In general.
 (1). Form and sufficiency.
 (2). Applicability of instructions.
 (3). Construction.
 (4). Intent of grantor.
 (5). Nature and form of transaction.
 (6). Indebtedness and insolvency.
 (7). Consideration.
 (8). Relationship of parties.
 (9). Reservations and trusts for grantor.
 (10). Preferences to creditors.
 (11). Retention or change of possession by grantor.

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- (12). Knowledge and intent of grantee.
310. Verdict and findings.
- (N) JUDGMENT OR DECREE.**
311. Judgment or decree.
 312. — In general.
 (1). Requisites and validity in general.
 (2). Mode and time of rendering.
 (3). Relief in general.
313. — As to property transferred.
 (.5). In general.
 (1). Setting aside conveyance.
 (2). Ordering sale of property.
314. — Personal judgment.
 315. — Construction and operation.
 (1). In general.
 (2). Persons entitled to claim benefit.
 (3). Lien.
- (O) EXECUTION AND ENFORCEMENT.**
316. In general.
 317. Sales and conveyances under order of court.
- (P) DISPOSITION OF PROPERTY OR PROCEEDS.**
318. Subjection to claims of creditors in general.
 319. Costs and expenses.
 320. Mortgages and other liens.
 321. Priorities of creditors.
 (1). In general.
 (2). Lien acquired by bringing suit.
322. Grantee or purchaser as creditor.
 323. Application to judgment or execution.
 324. Right to surplus.
- (Q) REVIEW.**
325. Presentation and reservation in lower court of grounds of review.
 326. Taking and perfecting proceedings and effect thereof.
 327. Scope and extent of review.
 328. Determination and disposition of cause.
- IV. CRIMINAL RESPONSIBILITY.**
329. Offenses.

IV. CRIMINAL RESPONSIBILITY.(Cont'd)

330. Penalties and actions therefor.
 331. Criminal prosecutions.

187. GAME**SUBJECTS INCLUDED**

Wild animals pursued for sport or profit
 Regulations for their preservation
 Nature and incidents of rights of taking game

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Animals in general, regulations relating to
 and offense of cruelty to animals, see ANI-
 MALS

Indian gaming rights, see INDIANS X

Protection of wildlife, particularly endangered
 or threatened species, see ENVIRON-
 MENTAL LAW

Sunday, hunting on, see SUNDAY

1. Right to take game and nature of property
therein.
2. What is game.
- 2.5. Game on public lands or waters.
3. Private rights of taking game.
- 3.5. Power to protect and regulate.
Injunctive relief, see INJUNCTION ¶1393.
4. Constitutional and statutory provisions.
5. Licenses.
6. Game wardens and other officers.
7. Offenses.
8. Penalties for violations of regulations.
9. Criminal prosecutions.
10. Searches and seizures.

188. GAMING AND LOTTERIES**188. GAMING AND LOTTERIES****SUBJECTS INCLUDED**

Wagers and other agreements to risk money
 or other property on the result of a contest
 or the happening of any uncertain event

Schemes for distribution of prizes by lot or
 chance among purchasers of shares therein
 or chances to obtain a prize

Constitutional and statutory prohibitions of
 gaming and lotteries

Nature, requisites, validity, incidents, con-
 struction, operation and effect of gaming
 and lottery agreements in general

Rights, liabilities and remedies of the parties
 to wagers or lottery owners or managers,
 and of purchasers or holders of lottery
 shares, tickets, or chances

Unlawful gaming, keeping or frequenting
 houses or other places for gaming, or con-
 ducting or advertising lotteries, as public
 offenses, and liability therefor, civil and
 criminal

Licensing and regulation of gaming

Grants and operation of lottery franchises and
 privileges

Management and regulation of lotteries,
 whether conducted under lottery franchises
 or directly by the government

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Indian gaming, see INDIANS IX

Insurance, wager policies of, see INSUR-
 ANCE

Mailing matter concerning lotteries, see
 POSTAL SERVICE

Sunday, gambling on, see SUNDAY

I. IN GENERAL, ¶200–269.

II. RIGHTS AND REMEDIES OF PAR-
 TIES, ¶270–299.

III. LICENSES AND REGULATION,
 ¶300–349.

IV. PENALTIES, ¶350–359.

188. GAMING AND LOTTERIES**V. SEARCHES AND SEIZURE,**

⌚360–364.

VI. FORFEITURES, ⌚365–379.**VII. CRIMINAL PROSECUTIONS,**

⌚380–404.

I. IN GENERAL.

- 200. In general.
- 201. What law governs.
- 202. Constitutional, statutory, and regulatory provisions.
- 203. — In general.
- 204. — Purpose in general.
- 205. — Construction and operation in general.
 - (1). In general.
 - (2). Liberal or strict construction.
 - (3). Remedial or penal construction.
- 206. — Validity.
 - (1). In general.
 - (2). Horse and dog racing; pari-mutuel betting.
 - (3). Lotteries, raffles, and bingo.
 - (4). Securities, futures, negotiable instruments.
 - (5). Trading stamps.
 - (6). Allowing recovery of winnings or money wagered.
 - (7). Gambling devices.
 - (8). Casinos.
 - (9). Operating or allowing a gaming house, place, or business.
 - (10). Penalties and forfeitures.
- 207. — Retroactive or prospective operation.
- 208. — Repeal or modification.
- 209. Proscription against gaming and lotteries in general.
- 210. Void or voidable nature.
- 211. Public policy.
- 212. Right to gamble.
- 213. Nature and elements of gaming.
- 214. — In general.
- 215. — Amount at stake; consideration.
- 216. — Form; terms or labels used by parties.
- 217. — Intent.
- 218. — Game, event, or hazard in general.
- 219. — Skill or chance in general.
- 220. — Distribution of property by chance.

I. IN GENERAL.(Cont'd)

- 221. — Prize.
- 222. Promoting gambling.
- 223. Collateral agreements; loans and credit.
- 224. Speculative transactions and dealings.
- 225. — In general.
- 226. — Security.
- 227. — Bills, notes, sales.
- 228. — Investments; futures and options; bets on rise or fall of prices.
- 229. — Hedging.
- 230. — Settling differences.
- 231. Trading stamps.
- 232. Lotteries and raffles.
- 233. Bingo.
- 234. Games, sports, contests in general.
- 235. Horse and dog racing; pari-mutuel betting.
- 236. Elections.
- 237. Dice.
- 238. Cards.
- 239. Slot and pinball machines.
- 240. Video games.
- 241. Stakeholding.
- 242. Records.
- 243. Bookmaking or pool selling.
- 244. Activity in a public place.
- 245. Operating an illegal gambling business.
- 246. — In general.
- 247. — Number of violators; size of business.
- 248. Travel Act.
- 249. Criminal gambling promotion.
- 250. Keeping a place of gaming.
- 251. Owning, permitting, or letting use of property for gaming.
- 252. Devices and equipment.
- 253. — In general.
- 254. — Manufacturing.
- 255. — Possession, keeping, or exhibiting.
 - (1). In general.
 - (2). Sale or offer to sell.
 - (3). Transporting across state lines.
- 256. Frequenting gambling place.
- 257. Common or professional gambler status.
- 258. Use of telecommunication devices.
- 259. Defenses.
- 260. — In general.

188. GAMING AND LOTTERIES**I. IN GENERAL.**(Cont'd)

- 261. — License.
- 262. Persons liable.

II. RIGHTS AND REMEDIES OF PARTIES.

- 270. In general.
- 271. What law governs.
- 272. Parties to bet or game.
- 273. — In general.
- 274. — Withdrawal or repudiation of wager or contract.
- 275. — Recovery of property wagered or lost.
 - (1). In general.
 - (2). Persons entitled to recover.
 - (3). Persons liable and extent of liability.
 - (4). Particular contexts.
 - (5). — In general.
 - (6). — Election wagers.
 - (7). — Lotteries.
 - (8). — Bingo.
 - (9). — Sporting events.
 - (10). — Horse and dog racing; pari-mutuel betting.
 - (11). — Speculative transactions and commodities contracts.
 - (12). Defenses.
 - (13). Amount of recovery.
- 276. — Right to recover winnings under contract.
 - (1). In general.
 - (2). Unlawful contracts and transactions in general.
 - (3). Particular contexts.
 - (4). — In general.
 - (5). — Election wagers.
 - (6). — Lotteries in general.
 - (7). — Lottery claims and tickets; determination of outcome.
 - (8). — Parties entitled to claim lottery winnings; assignments.
 - (9). — Bingo.
 - (10). — Sporting events.
 - (11). — Horse and dog racing; pari-mutuel betting.
 - (12). Speculative transactions and commodities contracts.
 - (13). Defenses.

II. RIGHTS AND REMEDIES OF PARTIES.(Cont'd)

- (14). Amount of recovery.
- 277. — Rights of licensed entity.
- 278. Stakeholders.
- 279. Agents for purpose of betting or gambling.
- 282. Summary remedies.
- 283. Actions.
- 284. — In general.
- 285. — Nature and form of remedy.
- 286. — Conditions precedent and exhaustion of remedies.
- 287. — Jurisdiction and venue.
- 288. — Time to sue and limitations.
- 289. — Parties.
- 290. — Process.
- 291. — Pleading.
- 292. — Evidence.
- 293. — Trial.
- 294. — Judgment.
- 295. — Review.

III. LICENSES AND REGULATION.

- 300. In general.
- 301. What law governs.
- 302. Boards, agencies, and regulatory personnel.
- 303. — In general.
- 304. — Racing boards.
- 305. — Gaming commissions and boards.
- 306. — Judicial review in general.
- 307. Eligibility for, right to, or necessity of license.
- 308. — In general.
- 309. — Casinos and gaming establishments.
 - (1). In general.
 - (2). Personnel issues.
- 310. — Bingo.
- 311. — Horse and dog racing; pari-mutuel betting.
- 312. Proceedings to obtain license.
- 313. — In general.
- 314. — Judicial review.
- 315. Regulation of licensed entities.
- 316. — In general.
- 317. — Bingo in general.
- 318. — Charitable activity.

188. GAMING AND LOTTERIES**III. LICENSES AND REGULATION.(Cont'd)**

- 319. — Casinos and gaming establishments.
 - (1). In general.
 - (2). Personnel.
 - (3). Restrictions on who may enter or participate.
- 320. — Horse and dog racing; pari-mutuel betting.
- 321. — Proceedings.
- 322. Taxes and fees.
- 323. — In general.
- 324. — Bingo in general.
- 325. — Charitable activity.
- 326. — Casinos.
- 327. — Horse and dog racing; pari-mutuel betting.
- 328. — Video games.
- 329. Rights and liabilities of licensed entities in enforcing and complying with regulations.
- 330. — In general.
- 331. — Exclusion or removal of patrons.
- 332. Discipline, fines, and penalties; suspension.
- 333. — In general.
- 334. — Casinos.
- 335. — Proceedings.
- 336. Revocation or termination.
- 337. — In general.
- 338. — Proceedings.
- 339. Renewal.
- 340. — In general.
- 341. — Proceedings.
- 342. Reinstatement.
- 343. — In general.
- 344. — Proceedings.

IV. PENALTIES.

- 350. In general.
- 351. Grounds of penalties.
- 352. Amount of penalties.
- 353. Persons who may enforce penalties.
- 354. Persons liable for penalties.
- 355. Proceedings to recover penalties.

V. SEARCHES AND SEIZURE.

- 360. In general.

VI. FORFEITURES.

- 365. In general.
- 366. Property subject to forfeiture.
- 367. Grounds of forfeitures.
- 368. Enforcement and effect of forfeitures.

VII. CRIMINAL PROSECUTIONS.

- 380. In general.
- 381. Indictment and information.
- 382. Evidence.
- 383. — In general.
- 384. — Presumptions and burden of proof.
- 385. — Admissibility.
- 386. — Weight and sufficiency.
 - (1). In general.
 - (2). Lotteries, raffles, and bingo.
 - (3). Horse and dog racing; pari-mutuel betting.
 - (4). Cards and dice.
 - (5). Slot machines.
 - (6). Gaming in a public place.
 - (7). Promotion of gambling.
 - (8). Common or professional gambler status.
 - (9). Bookmaking and paraphernalia associated therewith.
 - (10). Illegal gambling business.
 - (11). Travel Act.
 - (12). Use of telecommunication devices.
 - (13). Keeping or permitting place of gaming.
 - (14). Devices and equipment.
- 387. Instructions.
- 388. Questions of law or fact.
- 389. — In general.
- 390. — Lotteries, raffles, and bingo.
- 391. — Horse and dog racing; pari-mutuel betting.
- 392. — Cards and dice.
- 393. — Slot machines.
- 394. — Gaming in a public place.
- 395. — Promotion of gambling.
- 396. — Common or professional gambler status.
- 397. — Bookmaking and paraphernalia associated therewith.
- 398. — Illegal gambling business.
- 399. — Travel Act.

190. GAS**VII. CRIMINAL PROSECUTIONS.**(Cont'd)

- 400. — Use of telecommunication devices to.
- 401. — Keeping or permitting place of gaming.
- 402. — Devices and equipment.
- 403. Verdict and findings.
- 404. Sentence and punishment.

190. GAS**SUBJECTS INCLUDED**

Regulation of the production, supply and use of gas for illuminating, heating and like purposes, obtained either from natural sources or by any process of manufacture, whether under franchises granted therefor or directly by municipalities

Rights, powers, duties and liabilities of gas companies and of municipal corporations in respect of the supply of gas

Gas pipelines, mains and appliances

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations generally, matters applicable to, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Eminent domain, exercise of power, see **EMINENT DOMAIN**

Innkeepers' and landlords' liabilities for escape or explosion of gas, see **INNKEEPERS, LANDLORD AND TENANT**

Municipalities' powers to grant and regulate franchises and to make contracts with gas companies, see **MUNICIPAL CORPORATIONS**

Natural gas wells, landowners' and lessees' rights and liabilities, and regulation of production and disposition of gas at the well, see **MINES AND MINERALS**

Oil pipelines, see **CARRIERS, EASEMENTS**

Severance taxes, see **MINES AND MINERALS**

Taxation of gas companies, see **TAXATION**

- 1. Power to control and regulate.

- 2. Statutory and municipal regulation in general.
- 3. Establishment or acquisition of plant by public authorities.
- 4. Gas companies.
 - 4.1. — In general.
- 5. — Incorporation and organization.
- 6. — Franchises, privileges, and powers in general.
- 7. — Rights in streets and other public places.
 - (1). In general.
 - (2). Making, requisites, and validity of grant or license.
- 8. — Indebtedness, liens, and mortgages.
- 9. Mains, pipes, and appliances.
- 10. Licenses and taxes.
- 11. Inspection.
- 12. Supply to municipalities.
- 13. Supply to private consumers.

See also SALES.

 - (1). In general.
 - (2). Rules and regulations.
 - (3). Duty to supply gas.
 - (4). Duty to furnish meters.
 - (5). Control and regulation of meters.
 - (6). Right to shut off supply.
- 14. Charges.
 - 14.1. — In general.
 - (1). In general; amount and regulation.
 - (2). Uniformity of charges; discrimination.
 - (3). Contracts.
 - (4). Service charges.
 - (5). Rent of meters.
 - 14.2. — Municipal regulation.
 - 14.3. — Administrative regulation.
 - (1). In general.
 - (2). Federal Power Commission.
 - (3). Proceedings in general.
 - (4). Findings and orders.
 - 14.4. — Reasonableness of charges.
 - (1). In general.
 - (2). Elements considered in general.
 - (3). Determination of rate base in general.
 - (4). Method of valuation.
 - (5). Property included.
 - (6). Good will and going value.

190. GAS

- (7). Operating expenses in general.
- (8). Payments for gas by distributing companies.
- (9). Depreciation and depletion.
- (10). Earnings and reasonableness of return.
- (11). Allocation of items to areas or types of business.
- (12). Evidence.
- 14.5. — Judicial review and enforcement of regulations.
 - (1). In general.
 - (2). Injunction.
 - (3). Decisions reviewable.
 - (4). Persons entitled to relief; parties.
 - (5). Preliminary relief; supersedeas or stay.
 - (6). Scope of review and trial de novo.
 - (7). Presumptions.
 - (8). Questions of fact and findings.
 - (9). Determination and disposition.
 - (10). Distribution of impounded funds.
- 14.6. — Payment, collection, and recovery back.
- 14.50. Injuries incident to construction or operation of works in general.
- 15. Injuries from escape or explosion of gas.
 - 15.1. — In general.
- 16. — Nature and grounds of liability.
- 17. — Care required in general.
- 18. — Defects, acts or omissions causing injury.
- 19. — Contributory negligence.
- 20. — Actions.
 - (.5). In general.
 - (1). Pleading.
 - (2). Evidence.
 - (3). Damages.
 - (4). Questions for jury.
 - (5). Instructions.
 - (6). Verdict and findings.
- 21. Injuries to works, mains, pipes, or appliances.
- 22. Penalties for violations of regulations.
- 23. Offenses incident to production, supply, or use.

191. GIFTS**SUBJECTS INCLUDED**

Voluntary transfers of property without consideration, whether executed or to take effect on the death of the giver

Acceptance and revocation thereof

Nature, requisites, validity, incidents, operation and effect of such transfers

Evidence relating thereto

Rights and liabilities of parties thereto as between themselves and as to others in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Creditors' and subsequent purchasers' rights, effect of want of consideration, see FRAUDULENT CONVEYANCES

Deeds of gift, see REAL PROPERTY CONVEYANCES

Particular personal or confidential relations, effect of, see ATTORNEYS AND LEGAL SERVICES, EXECUTORS AND ADMINISTRATORS, MARRIAGE AND COHABITATION, PARENT AND CHILD

Taxation of gifts, see INTERNAL REVENUE, TAXATION

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- I. INTER VIVOS, ¶¶1–52.
 - II. CAUSA MORTIS, ¶¶53–85.

I. INTER VIVOS.

- 1. Nature of gift in general.
- 2. What law governs.
- 3. Statutory provisions.
- 4. Requisites in general.
- 5. Gifts distinguished from other transactions.
 - (1). In general.
 - (2). Gift or sale.
 - (3). Gift or transfer in trust.
- 6. Power to make gift.
- 7. Property which may be subject of gift.
 - 7.1. — In general.
- 8. — Real property and interests therein.
- 9. — Personal property in general.
- 10. — Rights of action.
- 11. Time of taking effect.
- 12. Parties.

191. GIFTS**I. INTER VIVOS.(Cont'd)**

- 12.1. — In general.
- 13. — Capacity to make gift.
- 14. — Capacity to take.
- 15. Intent.
- 16. Necessity for execution.
- 17. Delivery.
- 17.1. — In general.
- 18. — Necessity.
 - (1). In general.
 - (2). Necessity of surrendering control.
- 19. — Actual delivery to donee.
 - (1). In general.
 - (2). Delivery to donee residing with donor.
- 20. — Property in possession of donee.
- 21. — To third person for donee.
- 22. — Constructive delivery.
- 23. — Retention of possession by donor for donee.
- 24. Acceptance in general.
- 25. Parol gift of land.
- 26. Necessity of notarial or public act.
- 27. Gift of legacy or distributive share of estate.
- 28. Gifts of rights of action in general.
 - (1). In general.
 - (2). Securities in general.
 - (3). Insurance policy.
- 29. Gifts of corporate stock.
- 30. Gifts of deposits in bank.
 - (1). In general.
 - (2). Deposit in donee's name or in trust for donee.
 - (3). Delivery of certificate or bank book.
 - (4). Deposit in names of donor and donee.
 - (5). Revocation.
- 31. Gifts of negotiable instruments.
 - (1). In general.
 - (2). Necessity of written assignment.
 - (3). Delivery to third person for donee.
 - (4). Revocation.
- 32. Gifts of donor's note or check.
 - (1). In general.
 - (2). Revocation.
- 33. Forgiveness of debt of donee.

I. INTER VIVOS.(Cont'd)

- (1). In general.
- (2). Gift as affected by delivery of obligation to donee.
- 34. Qualified or conditional gifts.
- 35. Validity.
- 36. — In general.
- 37. — Mistake and misrepresentation.
- 38. — Fraud, duress, and undue influence.
- 39. — Illegality.
- 40. Ratification.
- 41. Revocation and rescission.
- 42. Operation and effect.
- 42.1. — In general.
- 43. — As to parties.
- 44. — As to bona fide purchasers.
- 45. Pleading.
- 46. Evidence.
- 46.1. — In general.
- 47. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Delivery and acceptance.
 - (3). Validity.
- 48. — Admissibility.
- 49. — Weight and sufficiency.
 - (1). In general.
 - (2). Validity.
 - (3). Delivery and acceptance.
 - (4). Gift of land in general.
 - (5). Gift of money or bank deposits in general.
 - (6). Gift of notes or securities in general.
- 50. Questions for jury.
- 51. Instructions.
- 52. Verdict and findings.

II. CAUSA MORTIS.

- 53. Requisites in general.
- 53.5. What law governs.
- 54. Gifts causa mortis distinguished from other transactions.
- 54.1. — In general.
- 55. — Gifts inter vivos.
- 56. Property which may be subject of gift.
- 57. Time of taking effect.
- 58. Parties.
- 59. Expectation of death.
- 60. Intent.

191. GIFTS**II. CAUSA MORTIS.(Cont'd)**

- 61. Necessity for execution.
- 62. Delivery.
 - (.5). In general.
 - (1). Necessity of delivery.
 - (2). Sufficiency of delivery in general.
 - (3). Delivery after death.
 - (4). Property in possession of donee.
 - (5). To third person for donee and property in possession of third person.
 - (6). Constructive delivery.
- 63. Acceptance in general.
- 64. Gifts of rights of action in general.
 - (1). In general.
 - (2). Negotiable instruments and securities.
- 65. Gifts of corporate stock.
- 66. Gifts of deposits in bank.
 - (1). In general.
 - (2). Delivery of bank book or certificate.
 - (3). Deposit jointly for donor and donee.
- 67. Gifts of donor's promissory note or check.
- 68. Forgiveness of debt of donee.
- 69. Particular qualifications or conditions.
- 70. Validity.
- 71. — In general.
- 72. — Mistake.
- 74. Revocation and rescission.
- 74.1. — In general.
- 75. — Survival of donor.
- 76. — Agreement or act of parties.
- 77. Operation and effect.
- 78. Pleading.
- 79. Evidence.
- 79.1. — In general.
- 80. — Presumptions and burden of proof.
- 81. — Admissibility.
- 82. — Weight and sufficiency.
 - (1). In general.
 - (2). Sufficiency to support finding.
- 83. Questions for jury.
- 84. Instructions.
- 85. Verdict and findings.

192. GOOD WILL**SUBJECTS INCLUDED**

Nature and incidents of rights of property in the custom or patronage of an established business or trade in general

Sales and other contracts relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts in restraint of trade for protection of good will and enforcement thereof by injunction, see CONTRACTS, INJUNCTION

Partners' rights in respect of good will of the firm business, see PARTNERSHIP

- 1. Nature of property.
- 2. Elements and incidents.
- 3. Ownership in general.
- 4. Sale or other transfer.
 - 4.1. — In general.
- 5. — Requisites and validity.
- 6. — Rights and liabilities of parties.
 - (1). In general.
 - (2). Breach of contract of sale.
 - (2.1). — In general.
 - (3). — Use of name.
 - (4). — Resumption of business by vendor.
- 7. Actions.

193. GRAND JURY**SUBJECTS INCLUDED**

Bodies of persons sworn to inquire into and make presentment of public offenses

Nature and constitution of such juries

Qualifications, selection, summoning and compensation of grand jurors

Challenges and objections

Organization, powers and duties, and general conduct of business of grand juries

Secrecy as to their proceedings

193. GRAND JURY

Liabilities of grand jurors for misconduct, etc., and liabilities of others for interference with grand juries

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indictments and presentments, necessity, finding, filing and requisites, including sufficiency of evidence to support them, see INDICTMENTS AND CHARGING INSTRUMENTS

Juries in general, matters relating to, see JURY

One-man grand jury and similar procedure, see CRIMINAL LAW

Witnesses' privilege against self-incrimination, see WITNESSES, CRIMINAL LAW

1. Nature and functions in general.
2. Constitutional and statutory provisions.
- 2.5. Constitution in general; representation of community.
3. Number of jurors.
4. Apportionment of jurors.
5. Qualifications of jurors.
6. Exemptions from service.
7. Authority to select and summon jurors.
8. Selection of jurors.
9. Summoning jurors in general.
10. Special venire or special grand jury.
11. Excusing and discharging jurors.
12. Summoning talesmen.
13. Attendance of jurors.
14. Compensation of jurors.
15. Competency of jurors.
16. Quashing venire.
17. Challenge to panel.
18. Challenges to individual jurors.
19. Waiver of objections to jurors.
20. Impaneling and organization in general.
21. Appointment of foreperson.
22. Oath.
23. Charge.
24. Powers and duties.
25. — In general.
26. — Offenses and accusations.
27. — Public officers and institutions.
28. Term of service and sessions.
29. — In general.
30. — Term of court.
31. — Adjournments.

32. Attendance of officer.
33. Conduct of proceedings in general.
34. Participation of prosecuting attorney, attorney general, or special attorney.
35. Presence of accused or counsel.
36. Witnesses and evidence.
 - 36.1. — In general; obligation to testify.
 - 36.2. — Witnesses and evidence subject to compulsion; relevancy and materiality.
 - 36.3. — Grounds for refusal to appear, testify, or produce evidence.
 - (1). In general.
 - (2). Privilege.
 - (3). Relation of inquiry to illegally-obtained evidence.
 - 36.4. — Compelling testimony or production; subpoenas and orders.
 - (1). In general.
 - (2). Indefiniteness or overbreadth; motive and purpose.
 - 36.5. — Contempt.
 - (1). In general.
 - (2). Punishment; purging contempt.
 - 36.6. — Examination in general.
 - 36.7. — Warnings, advice, or disclosure to witness.
 - 36.8. — Scope of proof; admissibility.
 - 36.9. — Objections and determination thereof.
 - (1). In general.
 - (2). Evidence, affidavits, or other showing.
37. Examination of accused.
38. Presence and use of stenographers.
39. Presence or participation of unauthorized persons.
40. Minutes or record of proceedings.
41. Secrecy as to proceedings.

Excludes impeachment of witnesses, see WITNESSES ¶379(9), and disclosure of grand jury materials in criminal prosecutions, see CRIMINAL LAW ¶627.9.

 - 41.10. — In general.
 - 41.20. — Persons subject to secrecy requirements; oath.
 - 41.30. — Matters subject to secrecy requirements.
 - 41.40. — Prevention of unauthorized disclosure.
 - 41.50. — Permitting disclosure.
 - (1). In general; discretion.

193. GRAND JURY

- (2). Matters which may be disclosed.
- (3). Persons to whom disclosure may be made.
- (4). Grounds or objections in general.
- (5). Necessity; use in or connection with judicial proceeding.
- (6). Civil proceedings.
- (7). Administrative or legislative proceedings; tax investigations.
- (8). End of grand jury session; return of indictment.
- (9). Showing irregularity of grand jury proceeding; impeaching indictment.
- (10). Proceedings for disclosure.
- 41.60. — Violation of secrecy requirements.
 - (1). In general; contempt.
 - (2). Evidence.
- 42. Presentments or reports to court in general.
- 43. Liabilities of jurors.
- 44. Liabilities for interference with grand jury.

195. GUARANTY**SUBJECTS INCLUDED**

Collateral promises to answer for the payment of a debt or performance of the duty or contract or other obligation by another, liable therefor in the first instance, in the event of his failure to pay or perform the same

Nature, requisites, validity, incidents, construction, operation and effect of such promises in general

Rights, liabilities and remedies of guarantors, principal debtors and creditors

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Frauds, statute of, requirements, see FRAUDS, STATUTE OF

Indemnity contracts, see INDEMNITY

Particular classes of persons, guaranties by, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP and other specific topics

Suretyship contracts, see PRINCIPAL AND SURETY

I. REQUISITES AND VALIDITY, ¶1–26.

II. CONSTRUCTION AND OPERATION, ¶27–47.

III. DISCHARGE OF GUARANTOR, ¶48–74.

IV. REMEDIES OF CREDITORS, ¶75–96.

V. RIGHTS AND REMEDIES OF GUARANTOR, ¶97–107.

I. REQUISITES AND VALIDITY.

- 1. Nature of obligation.
- 2. What law governs.
- 3. Express and implied guaranties.
- 4. Guaranty distinguished from other contracts.
- 5. Validity of obligation of principal.
- 6. Offer and acceptance in general.
- 7. Notice of acceptance.
 - (.5). In general.
 - (1). Necessity for notice in general.
 - (2). Notice or knowledge of acceptance.
 - (3). Guaranty given for a consideration.
 - (4). Sufficiency.
- 8. Written guaranties.
 - 8.1. — In general.
- 9. — Form and contents.
- 10. — Execution in general.
- 11. — Conditional signature.
- 12. — Delivery.
- 13. Consideration.
 - 13.1. — In general.
- 14. — Necessity.
- 15. — Effect of writing or seal.
- 16. — Sufficiency.
 - (1). In general.
 - (2). Consideration of principal contract in general.
 - (3). Guaranty made after principal contract.
 - (4). Forbearance.

195. GUARANTY**I. REQUISITES AND VALIDITY.(Cont'd)**

- 17. — Failure of consideration.
- 18. Validity of assent in general.
- 19. Mistake.
- 20. Fraud, duress, and undue influence.
- 21. Estoppel or waiver as to defects or objections.
- 22. Ratification.
- 23. Modification.
- 24. Revocation.
 - (1). In general.
 - (2). Death of guarantor.
- 25. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 26. Questions for jury.

II. CONSTRUCTION AND OPERATION.

- 27. General rules of construction.
- 28. What law governs.
- 29. Parties.
- 30. — In general.
- 31. — Joint or several.
- 32. Negotiability and transfer of guaranty.
- 33. Nature of liability.
- 34. — In general.
- 35. — Guaranty of negotiable instruments.
- 36. Scope and extent of liability.
 - (1). In general.
 - (2). Guaranties of loans and payment of indebtedness in general.
 - (3). Guaranties of bills and notes.
 - (4). Guaranties of investments in general.
 - (5). Guaranties of sales and credits.
 - (6). Guaranties of mortgages and judgments.
 - (7). Guaranties of building contracts.
 - (8). Guaranties of leases.
 - (9). Guaranties as covering costs and expenses.
- 37. Commencement and duration in general.
- 38. Continuing guaranty.
 - (1). In general.
 - (2). Sales and credits.
 - (3). Loans and discounts.

II. CONSTRUCTION AND OPERATION.(Cont'd)

- 39. Notice to guarantor of transactions under guaranty.
- 40. Limitation as to amount.
- 41. Interest.
- 42. Conditions.
 - (1). In general.
 - (2). Limitation as to amount.
- 43. Performance of contract or conditions by creditor.
- 44. Default of principal.
- 45. Demand on principal.
- 46. Notice of default to guarantor.
 - (1). In general.
 - (2). Sufficiency.
- 47. Time of accrual of liability.

III. DISCHARGE OF GUARANTOR.

- 48. Provisions of contract of guaranty in general.
- 49. Subsequent release or agreement.
- 50. Operation of law in general.
- 51. Death of principal.
- 52. Death of guarantor.
- 53. Change in obligation or duty of principal.
 - (1). In general.
 - (2). Assignment of original contract.
 - (3). Change in quantity or price.
- 54. Alteration of instrument.
- 55. Extension of time for payment or other performance.
- 56. — In general.
- 57. — Consideration.
- 58. Payment or other satisfaction by principal.
- 59. — In general.
- 60. — Application of payments.
- 60.5. Misapplication of funds or securities.
- 61. Taking additional security.
- 62. Release or loss of other securities.
- 63. Release of coguarantor.
- 64. Discharge of principal without payment or satisfaction.
- 66. Negligence of creditor in general.
- 67. Neglect to give notice of default to guarantor.
- 68. Premature action on original obligation.
- 69. Neglect to act or proceed against principal.
- 70. — In general.

195. GUARANTY**III. DISCHARGE OF GUARANTOR.(Cont'd)**

- 71. — After request of guarantor.
- 72. Waiver or estoppel of guarantor.
- 73. New promise after discharge.
- 74. Payment or other satisfaction by guarantor.

IV. REMEDIES OF CREDITORS.

- 75. Nature and form.
- 76. Rights of action.
- 77. Conditions precedent.
 - (1). In general.
 - (2). Proceedings against principal.
 - (3). Applying other security.
- 78. Defenses.
 - (1). In general.
 - (2). Set-off.
- 79. Conclusiveness of former adjudication in action against principal.
- 79.5. Recourse to indemnity to guarantor from principal.
- 80. Jurisdiction and venue.
- 81. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 82. Parties.
 - (.5). In general.
 - (1). Persons who may sue.
 - (2). Parties who must be sued.
 - (3). Joinder.
- 83. Pleading.
- 83.1. — In general.
- 84. — Mode and form in general.
- 85. — Declaration, complaint, or petition.
 - (1). In general.
 - (2). Pleading acceptance and notice.
- 86. — Plea or answer and subsequent pleadings.
- 87. — Issues, proof, and variance.
- 88. Evidence.
- 88.1. — In general.
- 89. — Presumptions and burden of proof.
- 90. — Admissibility.
- 91. — Weight and sufficiency.
- 92. Trial.
 - (1). In general.
 - (2). Instructions.
- 93. New trial.
- 94. Judgment.

IV. REMEDIES OF CREDITORS.(Cont'd)

- 95. Execution.
- 96. Appeal and error.

V. RIGHTS AND REMEDIES OF GUARANTOR.

- 97. As to creditor.
- 98. As to principal.
- 99. — In general.
- 100. — Indemnity or reimbursement.
- 101. — Enforcement against principal of judgment against guarantor.
- 102. — Actions against principal.
- 103. As to coguarantor.
- 104. — In general.
- 105. — Contribution.
- 106. — Actions between guarantors.
- 107. As to third persons.

196. GUARDIAN AND WARD**SUBJECTS INCLUDED**

General guardianship, particularly of the persons and estates of infants, by nature or under parental or judicial appointment

Rights, powers, duties, and liabilities of guardians in respect of the persons and property of their wards

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Guardians ad litem and special guardians, see INFANTS, MENTAL HEALTH and other specific topics

Infants and their property, matters irrespective of guardianship, see INFANTS

Insane or otherwise incompetent persons, guardianship of, see CHEMICAL DEPENDENTS, MENTAL HEALTH, SPEND-THRIFTS

- I. GUARDIANSHIP IN GENERAL, ¶1-7.
- II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN, ¶8-27.

196. GUARDIAN AND WARD

- III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE, ¶28-74.
- IV. SALES AND CONVEYANCES UNDER ORDER OF COURT, ¶75-115.
- V. ACTIONS, ¶116-136.
- VI. ACCOUNTING AND SETTLEMENT, ¶137-165.
- VII. FOREIGN AND ANCILLARY GUARDIANSHIP, ¶166-172.
- VIII. LIABILITIES ON GUARDIANSHIP BONDS, ¶173-182.

I. GUARDIANSHIP IN GENERAL.

- 1. The relation in general.
- 2. Power to control guardianship.
- 3. What law governs.
- 4. Guardians by nature.
- 5. Guardians in socage.
- 6. Volunteer and de facto guardians.
- 7. Estoppel to deny guardianship.

II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN.

- 8. Jurisdiction of courts.
- 9. Family meetings.
- 9.5. Persons for whom guardians may be appointed.
- 10. Persons who may be appointed.
- 11. Appointment by deed or will.
- 12. Appointment of undertutor.
- 13. Proceedings for judicial appointment.
 - (1). In general.
 - (2). Inventory.
 - (3). Application, parties, and notice.
 - (4). Evidence.
 - (5). Discontinuance.
 - (6). Temporary guardian.
 - (7). Findings and order.
 - (8). Review.
- 14. Acceptance and oath of office.
- 15. Bond.
- 16. Issuance of letters.
- 17. Operation and effect of appointment.
- 18. Revocation of appointment.
- 19. Election of new guardian by ward.
- 20. Majority of ward.
- 21. Marriage of ward.
- 22. Death of ward.
- 23. Resignation and discharge.
- 24. Disqualification.

II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN.(Cont'd)

- 25. Removal.
- 26. Death of guardian.
- 27. Appointment of successor.

III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE.

- 28. Representation of ward by guardian.
- 29. Custody and control of person.
- 30. Support and education.
 - (1). In general.
 - (2). Support by parents.
 - (3). Previous authority of court or family meeting.
- 31. Services and earnings.
- 32. Appraisal and inventory of estate.
- 33. Collection of assets.
- 34. Title to property in general.
- 35. Possession and use of property.
- 36. Management of estate.
- 37. — In general.
- 38. — Real property and interests therein.
- 39. — Personal property.
- 40. Sale.
 - 41. — In general.
 - 42. — Real property.
 - 43. — Personal property.
- 44. Lease.
- 45. Mortgage or pledge.
- 46. Indorsement and transfer of bills and notes.
- 47. Contracts.
 - 48. — In general.
 - 49. — Services.
 - 50. — Borrowing money.
 - 51. — Bills and notes.
 - 52. — Guaranty or suretyship.
- 53. Investments.
- 54. Interest on funds of estate.
- 55. Deposits.
- 56. Loans.
- 57. Gifts.
- 58. Expenditures.
- 59. Submission to arbitration.
- 60. Confession of judgment.
- 61. Estoppel.
- 62. Individual interest in transactions.
- 63. Fraud.

196. GUARDIAN AND WARD**III. CUSTODY AND CARE OF WARD'S
PERSON AND ESTATE.(Cont'd)**

- 64. Waste, conversion, or embezzlement by guardian.
- 65. Loss of property.
- 66. Torts.
- 67. Presentation and payment of claims.
- 68. Reimbursement and indemnity to guardian.
- 69. Conveyances, contracts, and other transactions between guardian and ward.
- 70. Ratification of unauthorized acts.
- 71. Joint guardianship.
- 72. Successive guardianships.
- 73. Representatives of deceased guardians.
- 74. Mortgage or lien of ward on property of guardian.

**IV. SALES AND CONVEYANCES
UNDER ORDER OF COURT.**

- 75. Nature of remedy.
- 76. Statutory provisions.
- 77. Purposes for which authorized.
- 78. Persons entitled to apply.
- 79. Property or interests subject to disposal.
- 80. Form of proceeding.
- 81. Jurisdiction.
- 82. Time for application.
- 83. Parties.
- 84. Guardians ad litem or special guardians.
- 85. Termination of guardianship pending proceedings.
- 86. Petition or other application.
- 87. Citation or notice.
- 88. Hearing of application in general.
- 89. Determination as to necessity for sale, mortgage, or lease.
- 90. Order or decree.
- 91. Oath.
- 92. Special bond for sale.
- 93. Appraisal of property to be sold.
- 94. Sale.
- 94.1. — In general.
- 95. — Authority and powers in making in general.
- 96. — Notice.
- 97. — Manner and conduct.
- 98. — Terms and conditions.
- 99. — Persons who may purchase.
- 100. — Requisites and validity in general.

**IV. SALES AND CONVEYANCES UNDER
ORDER OF COURT.(Cont'd)**

- 101. — Failure of bidder to complete purchase, and resale thereon.
- 102. — Report or return.
- 103. — Confirmation.
- 104. — Ratification and curing defects.
- 105. — Opening, vacating, or setting aside, and resale thereon.
 - (1). In general.
 - (2). Invalidity of appointment of guardian.
 - (3). Jurisdictional defects.
- 106. — Operation and effect.
- 107. — Collateral attack.
- 108. Rights and liabilities of purchasers.
- 109. Liabilities of guardians.
- 110. Liabilities on bonds for sale.
- 111. Deed to purchaser.
- 112. Mortgage.
- 113. Lease.
- 114. Proceeds.
- 115. Ratification of unauthorized act.

V. ACTIONS.

- 116. Capacity of guardian to sue and be sued in general.
 - (1). In general.
 - (2). Authority of court or family meeting.
- 117. Rights of action between guardian and ward.
- 118. Rights of action by guardian or ward or both.
- 119. Rights of action against guardian or ward or both.
- 120. Defenses against guardian or ward.
- 121. Defenses by guardian or ward.
- 122. Set-off and counterclaim.
- 123. Jurisdiction.
- 124. Venue.
- 125. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 126. Parties.
- 127. Joinder or intervention of guardian in actions by others.
- 128. Termination of guardianship pending action.
- 129. Process and appearance.
- 130. Pleading.

197. HABEAS CORPUS**V. ACTIONS.(Cont'd)**

- 131. Evidence.
- 132. Trial.
- 133. Judgment.
- 134. Execution and enforcement of judgment.
- 135. Appeal and error.
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- 139. Who liable.
- 140. Property subject to charge.
- 141. Property to be included.
- 142. Release from liability.
- 143. Nature and form of proceeding for accounting.
- 144. Jurisdiction of courts.
- 145. Proceedings for accounting.
- 146. Actions for accounting.
- 147. Charges.
- 148. Credits.
- 149. Compensation.
- 150. — In general.
- 151. — Commissions.
- 152. — Extra allowances.
- 153. Form and requisites of account.
- 154. Vouchers and proof of payment.
- 155. Objections and exceptions.
- 156. Examination of guardian.
- 157. Evidence.
- 158. Hearing or reference.
- 159. Order or decree.
- 160. Opening or vacating.
- 161. Review.
- 162. Costs and expenses.
- 163. Operation and effect.
- 164. Private accounting and settlement.
- 165. Actions to open or set aside settlement.

VII. FOREIGN AND ANCILLARY GUARDIANSHIP.

- 166. Foreign appointment.
- 167. Ancillary appointment.
- 168. Custody and disposition of property.
- 169. Sales and conveyances under order of court.
- 170. Actions by foreign guardians.

VII. FOREIGN AND ANCILLARY GUARDIANSHIP.(Cont'd)

- 171. Actions against foreign guardians.
- 172. Accounting and settlement.

VIII. LIABILITIES ON GUARDIANSHIP BONDS.

- 173. Nature and extent in general.
- 174. Property covered.
- 175. Functions and acts covered.
- 176. Settlement and discharge of principal.
- 177. Discharge of sureties.
- 178. Breach or fulfillment of condition.
- 179. Necessity of accounting and default by principal.
- 180. Conclusiveness of adjudication against principal.
- 181. Summary remedies.
- 182. Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Time to sue and limitations.
 - (4). Parties.
 - (5). Pleading.
 - (6). Evidence.
 - (7). Trial and judgment.

197. HABEAS CORPUS**SUBJECTS INCLUDED**

Writs of habeas corpus commanding the production of a person detained by another, with the cause of such detention, for determination thereof

Nature and scope of the remedy in general

Grounds of such writs

To and against whom and for what restraint they are allowed

Jurisdiction to grant and proceedings to obtain the writ

Issuance, requisites and validity of writs, service thereof, return thereto and proceedings thereon

Judgments or orders and enforcement thereof

Review of proceedings and costs

Disobedience to such writs

197. HABEAS CORPUS

Suspension of the remedy
Personal restraint petitions

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Conflicting jurisdiction of particular courts,
see COURTS and FEDERAL COURTS

Habeas corpus ad prosequendum, for produc-
tion of accused in the prosecution, see
CRIMINAL LAW

Habeas corpus ad testificandum, for produc-
tion of prisoners to testify as witnesses, see
WITNESSES

-
- I. IN GENERAL, ¶201–440.
- (A) IN GENERAL, ¶201–250.
1. NATURE OF REMEDY IN GENERAL, ¶201–220.
 2. NECESSITY AND EFFECT OF WRIT; MOOTNESS AND PREMATURITY, ¶221–250.
- (B) NECESSITY, NATURE, AND SUFFICIENCY OF RESTRAINT OR DETENTION, ¶251–270.
- (C) EXISTENCE AND EXHAUSTION OF OTHER REMEDIES, ¶271–310.
- (D) FEDERAL COURT REVIEW OF PETITIONS BY STATE PRISONERS, ¶311–440.
1. IN GENERAL, ¶311–330.
 2. PARTICULAR ERRORS AND PROCEEDINGS, ¶331–350.
 3. PARTIAL EXHAUSTION, ¶351–360.
 4. SUFFICIENCY OF PRESENTATION OF ISSUE OR UTILIZATION OF STATE REMEDY, ¶361–400.
 5. AVAILABILITY OF REMEDY DESPITE PROCEDURAL DEFAULT OR WANT OF EXHAUSTION, ¶401–420.
 6. STATE'S RELIANCE ON OR WAIVER OF PROCEDURAL BAR OR WANT OF EXHAUSTION, ¶421–430.
 7. DETERMINATION, ¶431–440.
- II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT, ¶441–600.
- (A) GROUND AND NATURE OF RESTRAINT, ¶441–460.
- (B) PARTICULAR DEFECTS AND AUTHORITY FOR DETENTION IN GENERAL, ¶461–519.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT—Cont'd

- (C) RELIEF AFFECTING PARTICULAR PERSONS OR PROCEEDINGS, ¶520–600.
- III. JURISDICTION, PROCEEDINGS, AND RELIEF, ¶601–890.
- (A) IN GENERAL, ¶601–610.
- (B) JURISDICTION AND VENUE, ¶611–660.
1. IN GENERAL, ¶611–630.
 2. PERSONAL JURISDICTION AND VENUE, ¶631–650.
 3. WAIVER AND TRANSFER, ¶651–660.
- (C) PROCEEDINGS, ¶661–810.
1. IN GENERAL, ¶661–698.
 2. EVIDENCE, ¶699–740.
 3. HEARING, ¶741–760.
 4. CONCLUSIVENESS OF PRIOR DETERMINATIONS, ¶761–790.
 5. DETERMINATION AND DISPOSITION; RELIEF, ¶791–810.
- (D) REVIEW, ¶811–880.
1. IN GENERAL, ¶811–840.
 2. SCOPE AND STANDARDS OF REVIEW, ¶841–860.
 3. DETERMINATION AND DISPOSITION, ¶861–880.
- (E) COSTS, ¶881–890.
- IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS, ¶891–910.
- V. SUSPENSION OF WRIT, ¶911–913.

I. IN GENERAL.

(A) IN GENERAL.

1. NATURE OF REMEDY IN GENERAL.

201. In general.
202. Civil or criminal nature.
203. Collateral or direct attack.
204. Equitable considerations.
205. Constitutional and statutory provisions.
206. Purpose and use of writ.
- 206.1. — In general.
207. — Release from restraint.
208. — Other objectives; damages, etc.
209. Discretion of court.
210. Personal restraint petitions.

2. NECESSITY AND EFFECT OF WRIT; MOOTNESS AND PREMATURITY.

221. In general.

197. HABEAS CORPUS**I. IN GENERAL.**(Cont'd)

- 222. Right to immediate release, in general.
- 223. Particular issues and problems.
- 224. Petitioner released or discharged; expired sentences.
- 224.1. — In general.
- 225. — Release on parole or probation.
- 226. Collateral consequences, in general.
- 227. Multiple commitments; concurrent sentences.
- 228. Sentence valid in part.
- 229. Successive sentences; anticipated confinement.
- 230. Enhanced or enhancing sentences.
- 231. Prison conditions, management, or discipline; good time credits.
- 232. Infants; child custody.
- 233. Mentally disordered or chemically dependent persons.
- 234. Contemnors.
- 235. Aliens.

(B) NECESSITY, NATURE, AND SUFFICIENCY OF RESTRAINT OR DETENTION.

- 251. In general.
- 252. "In custody" requirement, in general.
- 253. Particular issues and problems.
- 254. Fines and assessments.
- 255. Release on bond, bail, or recognizance.
- 256. Probation, parole, conditional release, or furlough.
- 257. Aliens.
- 258. Armed services.
- 259. Voluntary restraint.
- 260. Public or private authority.

(C) EXISTENCE AND EXHAUSTION OF OTHER REMEDIES.

- 271. In general.
- 272. Administrative remedies, and review thereof.
- 273. Exhaustion and procedural default, in general.
- 274. Pending proceedings; pretrial or pre-judgment petitions.
- 275. Particular issues and problems.
- 275.1. — In general.
- 276. — Plea and effect thereof.
- 277. — Prisons; conditions, discipline, transfer, etc.

I. IN GENERAL.(Cont'd)

- 278. — Length of sentence.
- 279. — Parole.
- 280. — Infants, child custody.
- 281. — Mentally disordered or chemically dependent persons.
- 282. — Aliens.
- 283. — Armed services.
- 284. — Native Americans; tribal courts.
- 285. Post-conviction motions or proceedings.
Includes new Trial motions.
- 285.1. — In general.
- 286. — Review thereof.
- 287. Appeal, error, or other direct review.
- 287.1. — In general.
- 288. — Habeas corpus as substitute remedy.
- 289. — Particular issues and problems.
- 290. Appeal, error, or other direct review of conviction.
- 290.1. — In general.
- 291. — Particular issues and problems.
- 292. — Indictment and information; plea.
- 293. — Evidence and witnesses; arrest and search.
- 294. — Trial.
- 295. — Counsel.
- 296. — Verdict, sentence, and punishment.

(D) FEDERAL COURT REVIEW OF PETITIONS BY STATE PRISONERS.**1. IN GENERAL.**

- 311. Petitions by state or territorial prisoners in general.
- 312. Presentation of claim in state court, in general.
- 313. Forfeiture, waiver, bypass, procedural default, or failure to object.
- 313.1. — In general.
- 314. — Default, etc., precluding state court consideration.
- 315. — Contemporaneous objection requirement.
- 316. — Tactical decisions; deliberate bypass.
- 317. — Escape or flight.
- 318. — Guilty plea.
- 319. Exhaustion of state remedies.
- 319.1. — In general.

197. HABEAS CORPUS**I. IN GENERAL.**(Cont'd)

320. — Comity or jurisdiction.
 321. — Civil actions; civil rights cases.

2. PARTICULAR ERRORS AND PROCEEDINGS.

331. Particular state proceedings.
 332. Criminal prosecutions.
 332.1. — In general.
 333. — Mental competency, claims relating to.
 334. — Extradition and detainers.
 335. — Time; speedy trial; continuance.
 336. — Indictment and plea.
 337. — Jury; grand jury.
 338. — Counsel.
 339. — Evidence and witnesses; arrest and search.
 340. — Trial; instructions.
 341. — Prosecutorial misconduct; perjured testimony.
 342. — Sentence and punishment.
 343. Waiver by counsel alone.

3. PARTIAL EXHAUSTION.

351. In general; mixed petitions.
 352. Dismissal.

4. SUFFICIENCY OF PRESENTATION OF ISSUE OR UTILIZATION OF STATE REMEDY.

361. In general.
 362. Particular remedies or proceedings.
 362.1. — In general.
 363. — Review by highest state court.
 364. — Habeas corpus.
 365. — Coram nobis, post-conviction motion, or similar collateral proceedings.
 366. — Direct review; appeal or error.
Includes appeal to intermediate court and pursuit of higher court review, but excludes appeal from denial of collateral relief, see ¶364, 365, above.
 367. — Review by Federal Supreme Court.
 368. Necessity for repetition or pursuit of several remedies.
 368.1. — In general.
 369. — Sufficiency of direct review.
 370. — Sufficiency of collateral attack.
 371. — Class proceedings; vicarious exhaustion.
 372. State proceedings pending.
 372.1. — In general.
 373. — Pretrial or prejudgment petitions.

I. IN GENERAL.(Cont'd)

374. Availability and effectiveness of state remedies.
Excludes futility because of settled state of substantive law, see ¶408 below.
 374.1. — In general.
 375. — Indigent petitioners.
 376. — Availability of successive remedies.
 377. — Delay in remedy; frustration by state.
 378. — Availability at time of petition.
 379. Rights and remedies lately available.
 380. Sufficiency of presentation; fair presentation.
 380.1. — In general.
 381. — Identity of issues in state and federal courts.
 382. — Identity of facts, law, and theory.
 383. — Necessity and sufficiency of identification of federal constitutional issue.
 384. Procedural error; wrong court or remedy.
 385. Necessity, sufficiency, and effect of state court ruling on federal claim.

5. AVAILABILITY OF REMEDY DESPITE PROCEDURAL DEFAULT OR WANT OF EXHAUSTION.

Excludes instances in which state law does not require prior objection, see ¶313 et seq., above, and unavailability or ineffectiveness of state remedy, see ¶374–378, above.

401. In general.
 402. Consideration of case so as to deny relief.
 403. Invalidity of state procedural requirement; inconsistent application.
 404. Cause and prejudice in general.
 405. Cause or excuse.
 405.1. — In general.
 406. — Ineffectiveness or want of counsel.
 407. — Ignorance of law or fact; novelty and change in law.
 408. — Futility; settled state of law.
 409. Prejudice.

6. STATE'S RELIANCE ON OR WAIVER OF PROCEDURAL BAR OR WANT OF EXHAUSTION.

421. In general.
 422. State court decision on procedural grounds, and adequacy of such independent state grounds.

197. HABEAS CORPUS**I. IN GENERAL.**(Cont'd)

- 423. State court consideration of merits.
- 424. State court decision ambiguous or a denial on both grounds.

7. DETERMINATION.

- 431. In general.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.**(A) GROUND AND NATURE OF RESTRAINT.**

- 441. Improper restraint or detention in general.
- 442. Errors or irregularities; prejudice.
- 443. Jurisdictional defects.
- 443.1. — In general.
- 444. — Personal jurisdiction; venue.
- 445. Void or invalid judgment or order.
- 446. Excess of jurisdiction or authority.
- 447. Deprivation of fundamental or constitutional rights; miscarriage of justice.
- 448. Lawful detention; valid or errorless judgment or order; conviction.
- 448.1. — In general.
- 449. — Judgment affirmed; habeas corpus as second appeal.
- 450. Federal review of state or territorial cases.
- 450.1. — In general.
- 451. — Supervisory or appellate authority.
- 452. — Federal or constitutional questions.
- 453. — Questions of local law.

(B) PARTICULAR DEFECTS AND AUTHORITY FOR DETENTION IN GENERAL.

- 461. Grounds in general.
- 462. Criminal liability; innocence.
- 463. Authority for detention under statute or ordinance.
- 463.1. — In general.
- 464. — Validity of statute or ordinance.
- 465. Defenses.
- 465.1. — In general.
- 466. — Former jeopardy.
- 467. Courts; judges, magistrates, or officers.
- 468. Priority of right to custody.
- 469. Bail.
- 470. Arrest; pretrial detention and presentation to magistrate.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.(Cont'd)

- 471. Searches and seizures; electronic surveillance.
- 472. Preliminary hearing or examination.
- 473. Grand jury.
- 474. Indictment, information, affidavit, or complaint.
- 475. Arraignment and plea.
- 475.1. — In general.
- 476. — Plea bargain.
- 477. Mental competency; examination.
- 478. Joinder or severance of counts or defendants.
- 479. Time for trial; continuance.
- 480. Discovery and disclosure.
- 481. Conduct of trial, in general.
- 482. Counsel.
- 482.1. — In general.
- 483. — Stage or nature of proceedings.
- 484. — Inquiry, advice, warnings, and assistance; waiver.
Excludes right to appointment at various stages or proceedings, see ¶483, above.
- 485. — Choice of counsel; change; “standby.”
- 486. — Adequacy and effectiveness of counsel.
 - (1). In general.
 - (2). Particular issues and problems.
 - (3). Arraignment and plea.
 - (4). Evidence; procurement, presentation, and objection.
 - (5). Post-trial proceedings; sentencing, appeal, etc.
- 487. — Conflict of interest; joint representation.
- 488. — Access and consultation; delay and want of preparation.
- 489. Evidence.
- 489.1. — In general.
- 490. — Admissibility.
 - (1). In general.
 - (2). Identification of accused.
 - (3). Confessions, declarations, and admissions.
 - (4). Illegally obtained evidence.
 - (5). Opinion evidence.
 - (6). Other offenses.

197. HABEAS CORPUS**II. GROUNDS FOR RELIEF; ILLEGALITY
OF RESTRAINT.(Cont'd)**

- 491. — Perjured or falsified evidence; recantation.
- 492. — Exclusion of evidence.
- 493. — Weight and sufficiency.
 - (1). In general.
 - (2). Federal review of state proceedings, in general.
 - (3). Particular issues and problems.
- 494. — Newly discovered evidence.
- 495. Witnesses; examination.
Excludes expert witnesses, see ¶490(5), above.
- 496. Jury.
- 497. Prosecutorial and police misconduct; argument.
- 498. Instructions.
- 499. Conduct and deliberations of jury.
- 500. Review; post-conviction relief and new trial.
- 500.1. — In general.
- 501. — Transcript or record.
- 502. — Indigents.
- 503. Judgment, sentence, or order.
- 503.1. — In general.
- 504. — Void sentence.
- 505. — Procedural errors.
- 506. — Probation or suspension.
- 507. — Excessiveness.
- 508. — Death sentence.
- 509. — Habitual or repeat offenders.
 - (1). In general.
 - (2). Validity of prior adjudications.
- 510. — Computation.
 - (1). In general; completion of term.
 - (2). Credits.
- 511. — Delay in enforcement.
- 512. Nature and place of confinement.
- 512.1. — In general.
- 513. — Limitations and conditions; treatment and discipline.
- 514. — Place of confinement; transfer.
- 515. — Good conduct credit.
- 516. Pardon and parole.
- 516.1. — In general.
- 517. — Revocation.

**(C) RELIEF AFFECTING PARTICULAR
PERSONS OR PROCEEDINGS.**

- 520. In general.

**II. GROUNDS FOR RELIEF; ILLEGALITY
OF RESTRAINT.(Cont'd)**

- 521. Aliens.
- 522. Armed services.
- 522.1. — In general.
- 523. — Compulsory service.
- 524. — Courts martial.
- 525. Extradition and detainers.
- 525.1. — In general.
- 526. — Particular issues and problems.
- 527. — International extradition.
- 528. Contempt.
- 528.1. — In general.
- 529. — Domestic relations cases.
- 529.5. Enemy combatants and similar detainees.
- 530. Federal officers, relief of.
- 531. Infants.
- 531.1. — In general.
- 532. — Custody in general.
 - (1). In general.
 - (2). Judgment or order awarding custody.
- 533. — Illegitimate children.
- 534. — Adoption.
- 535. — Delinquents and young offenders.
- 536. — Dependent or neglected children; termination of parental rights.
- 537. Mentally disordered and chemically dependent persons.
- 537.1. — In general.
- 538. — Convicts and insanity acquittees; incompetent defendants.
- 539. Native Americans; tribal courts.
- 540. Quarantine and health.

**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.****(A) IN GENERAL.**

- 601. In general.
- 602. Estoppel; petitioner's misconduct.
- 603. Limitations, laches or delay.
- 603.1. — In general.
- 603.2. — Laches or delay in general.
- 603.3. — Limitations applicable.
- 603.4. — Bar of limitations in general.
- 603.5. — Accrual.
- 603.6. — Relation back.

197. HABEAS CORPUS**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 603.7. — Cause, prejudice, and exceptions in general.
- 603.8. — Tolling in general.
- 603.9. — Pursuit of other remedies.
- 603.10. — Wrongful impediment by state.
- 603.11. — Newly recognized rights.
- 603.12. — Delayed discovery of claim.
- 603.13. — Equitable tolling in general.
- 603.14. — Petitioner's mental state, ignorance, or lack of skill.
- 603.15. — Causation.
- 603.16. — Access and assistance.
- 603.17. — Diligence.
- 603.18. — Miscarriage of justice; actual innocence.
- 603.19. — Newly discovered evidence.
- 603.20. — Proceedings in general.
- 603.21. — Evidence.
- 603.22. — Date of filing; mailbox rule.

(B) JURISDICTION AND VENUE.**1. IN GENERAL.**

- 611. In general.
- 612. State courts; judges, or officers.
- 612.1. — In general.
- 613. — Appellate courts.
- 614. — Infants; custody cases.
 - (1). In general.
 - (2). Interstate disputes.
- 615. — Extradition or detainer cases.
- 616. — Persons in federal custody.
- 617. Federal courts.
- 617.1. — In general.
- 618. — Military courts.
- 619. — Courts of territories or possessions; District of Columbia.
- 620. — Detention by state or territorial authorities.
 - (1). In general.
 - (2). Who are state prisoners.
- 621. Exclusive, concurrent, or conflicting jurisdiction.
- 621.1. — In general.
- 622. — Review of different court.
 - (1). In general.
 - (2). Court of superior or coordinate jurisdiction.

**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 623. — Preference for inferior over appellate court.
- 624. — Infants; custody cases.

2. PERSONAL JURISDICTION AND VENUE.

- 631. In general; territorial limitations in general.
- 632. Federal courts.
- 632.1. — In general.
- 633. — State or territorial prisoners.
- 634. State or territorial courts.
- 635. Inmates of mental institutions.
- 636. Infants; custody cases.
- 637. Extradition and detainer cases.
- 638. Armed services.
- 639. Aliens.
- 640. Transfer of prisoner pending proceedings.

3. WAIVER AND TRANSFER.

- 651. Waiver of objections.
- 652. Transfer and change of venue.

(C) PROCEEDINGS.**1. IN GENERAL.**

- 661. In general.
- 662. Parties; standing.
- 662.1. — In general.
- 663. — Representative or class actions.
- 664. Pleadings and motions in general.
- 665. Petition or application.
- 665.1. — In general.
- 666. — Characterization; treatment as habeas corpus petition.
- 667. — Construction; liberality and disregard of technical requirements.
- 668. — Pro se or lay petitions.
- 669. — Formal requirements.
- 670. — Particular issues and problems, sufficiency of petition.
 - (1). In general.
 - (2). Identity of custodian and place of custody.
 - (3). Exhaustion of remedies; prior applications.
 - (4). Counsel.
 - (5). Plea.

197. HABEAS CORPUS**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- (6). Evidence and witnesses; arrest and search.
- (7). Perjured testimony.
- (8). Sentence and punishment; parole.
- (9). Review procedures; new trial.
- (10). Infants; child custody.
- (11). Mentally disordered and chemically dependent persons.
- 671. Exhibits and attachments.
- 672. Demurrer; amended and supplementary pleadings.
- 673. Signature and verification.
- 674. Allowance and issuance of writ or rule to show cause.
- 674.1. — In general.
- 675. — Summary disposition for facial insufficiency of petition.
- 676. — Form and requisites of writ.
- 677. Process or notice.
- 678. Operation and effect of writ or application.
- 678.1. — In general.
- 679. — Supersedeas or stay of proceedings.
- 680. Return or answer.
- 680.1. — In general.
- 681. — Mode, form, requisites, and sufficiency.
- 682. — Production of record or transcript.
- 683. — Conclusiveness and effect.
- 684. — Defects, objections, and amendment.
- 685. Production of person on return or for hearing.
- 686. Reply or answer to return or answer.
- 687. Issues, proof, and variance.
- 688. Discovery and disclosure; physical or mental examination.
- 689. Time for proceedings; continuance.
- 690. Counsel, right and necessity.
- 691. Dismissal.
Strictly limited to dismissal as a remedy. Excludes dismissal of "mixed petitions," see ¶352, above, "summary" dismissal, see ¶675, above, and dismissal with or without prejudice, see ¶894 et seq., below.
- 691.1. — In general.
- 692. — Voluntary dismissal or withdrawal.
- 693. — Proceedings.

2. EVIDENCE.

Excludes evidence on exhaustion or bypass issues in federal courts, see ¶431, above.

- 699. In general.
- 700. Judicial notice.
- 701. Presumptions.
- 701.1. — In general.
- 702. — Validity and regularity of prior proceedings.
- 703. — Assistance of counsel.
- 704. — Extradition.
- 705. Burden of proof.
- 705.1. — In general.
- 706. — Particular issues and problems.
- 707. — Guilty plea.
- 708. — Evidence and witnesses; arrest and search.
- 709. — Counsel.
- 710. — Sentence and punishment.
- 711. — Particular persons and proceedings.
- 712. Admissibility.
- 712.1. — In general.
- 713. — Record and papers in proceedings under review.
- 714. Weight and sufficiency in general.
- 715. Criminal proceedings, weight and sufficiency.
- 715.1. — In general.
- 716. — Arrest; searches and seizures.
- 717. — Indictment and information; arraignment and plea.
- (1). In general.
- (2). Voluntariness of plea.
- 718. — Mental competency; examination.
- 719. — Discovery and disclosure; coerced or perjured testimony.
- 720. — Conduct of trial in general; time.
- 721. — Counsel.
- (1). In general.
- (2). Adequacy and effectiveness.
- (3). Multiple representation; conflict of interest.
- 722. — Evidence and witnesses.
- (1). In general.
- (2). Confessions, statements, and admissions.
- 723. — Jury; grand jury; deliberations.
- 724. — Review.
- 725. — Sentence and punishment.

197. HABEAS CORPUS**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 726. Relief affecting particular persons or proceedings, weight and sufficiency.
- 726.1. — In general.
- 727. — Aliens.
- 728. — Armed services.
- 729. — Extradition and detainers.
- 730. — Contempt.
- 731. — Infants.
- 732. — Mentally disordered and chemically dependent persons.

3. HEARING.

- 741. In general.
- 742. Discretion and necessity in general.
- 743. Particular issues and problems.
- 744. Child custody cases.
- 745. Criminal cases.
- 745.1. — In general.
- 746. — Counsel.
- 747. — Plea.
- 748. — Mental competency.
- 749. — Evidence and witnesses, arrest and search.
- 750. — Jury; grand jury.
- 751. — Sentence and punishment.
- 752. Conduct of hearing.
- 752.1. — In general.
- 753. — Reception of evidence; affidavits; matters considered.
- 754. Reference.
Excludes reference to United States Magistrate Judges, see UNITED STATES MAGISTRATE JUDGES.

**4. CONCLUSIVENESS OF PRIOR
DETERMINATIONS.**

- 761. In general.
- 762. Res judicata or collateral estoppel effect.
- 763. Adequacy or effectiveness of prior proceedings; full and fair litigation.
- 764. Matters determined on appeal.
- 765. State determinations in federal court.
Excludes determinations of state law, see ¶453, above, but includes application of law to case.
- 765.1. — In general.
- 766. — Adequacy or effectiveness of state proceeding; full and fair litigation.
- 767. — Issues and findings of fact; historical facts; credibility.

**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 768. — Presumptive accuracy of state determination, and rebuttal of presumption.
- 769. — Existence and adequacy of record or findings.
- 770. — Particular issues and problems.
- 771. — Mental competency.
- 772. — Plea.
- 773. — Counsel.
- 774. — Waiver of rights; exhaustion, bypass, or default.
- 775. — Admissibility of evidence; arrest and search.
 - (1). In general.
 - (2). Adequacy or effectiveness of state proceeding; full and fair litigation.
- 776. — New evidence.
- 777. Decisions of United States Supreme Court.

5. DETERMINATION AND DISPOSITION; RELIEF.

- 791. In general.
- 792. Conditional relief; new trial or other proceeding.
- 792.1. — In general.
- 793. — Resentencing.
- 794. Proceedings by state prisoners in federal courts.
- 794.1. — In general.
- 795. — Conditional relief; new trial or other proceeding.
 - (1). In general.
 - (2). Opportunity for state court determination of admissibility of evidence.
 - (3). Resentencing.
 - (4). Exhaustion of remedies.
- 796. Particular persons or proceedings.
- 796.1. — In general.
- 797. — Mentally disordered and chemically dependent persons.
- 798. — Infants.
- 799. Findings; formal orders.
- 800. Bail or release pending proceeding.
- 801. Default or summary judgment.
- 802. Relief from judgment; revocation or modification.

197. HABEAS CORPUS**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 803. New trial.
- 804. Enforcement; contempt.
- 805. Penalties and damages.

(D) REVIEW.**1. IN GENERAL.**

- 811. In general.
- 812. Nature and form of remedy.
- 813. Jurisdiction.
- 814. Decisions reviewable.
- 815. Persons entitled to review; parties.
- 816. Presentation and reservation in lower habeas court of grounds of review.
- 817. Requisites and proceedings for transfer of cause.
 - 817.1. — In general.
- 818. — Certificate of probable cause.
- 819. — Time for proceeding.
- 820. — Proceeding in forma pauperis; counsel.
- 821. Effect of proceeding for review; stay.
 - 821.1. — In general.
- 822. — Bail, release, or enlargement.
- 823. Record.
- 824. Assignment of errors and briefs.
- 825. Dismissal.
 - 825.1. — In general.
- 826. — Mootness.
 - (1). In general.
 - (2). Parole or other release.
 - (3). Appeals not moot, or considered despite mootness.
 - (3.1). — In general.
 - (4). — Parole or other release.
- 827. Hearing and rehearing.
- 828. Habeas corpus to review proceedings.

2. SCOPE AND STANDARDS OF REVIEW.

- 841. In general.
- 842. Review de novo.
- 843. Discretion of lower court.
- 844. Presumptions and burden of proof.
- 845. Questions of law and fact.
- 846. Clear error.
- 847. Harmless, reversible, or prejudicial error.

**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)**

- 848. Waiver of error on appeal; estoppel to assert error.
- 849. Subsequent appeals; review of intermediate court.

3. DETERMINATION AND DISPOSITION.

- 861. In general.
- 862. Remand.
 - 862.1. — In general.
- 863. — Particular issues and problems.
- 864. — Criminal cases.
 - (1). In general.
 - (2). Competency.
 - (3). Plea.
 - (4). Evidence and witnesses; arrest and search.
 - (5). Sentence and punishment.
 - (6). Exhaustion and bypass issues.
 - (7). Counsel.
- 865. — Extradition and detainer cases.

(E) COSTS.

- 881. In general.
- 882. Domestic relations cases.
- 883. Indigent petitioners.

Excludes compensation of counsel for petitioner, see ¶690, above.
- 883.1. — In general.
- 884. — Transcripts.

IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS.

- 891. In general.
- 892. Order of discharge or other relief.
 - 892.1. — In general.
- 893. — State prisoners in federal courts.
- 894. Refusal to discharge; subsequent applications; prejudice.
 - 894.1. — In general.
- 895. — Dismissal without prejudice.
- 896. — Abuse of the writ, in general.
- 897. — Claims presented earlier.
- 898. — Claims not presented or adjudicated earlier.
 - (1). In general.
 - (2). Excuses for failure, ignorance or unavailability.

198H. HEALTH**IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS.**(Cont'd)

- (3). Change in facts or law; new evidence.
- (4). Partial exhaustion of state remedies.
- 899. Proceedings as to subsequent or successive applications; evidence.
- 900. Effect of determination on other remedial proceedings.
- 900.1. — In general.
- 901. — Civil rights actions.
- 902. — Child custody cases.

V. SUSPENSION OF WRIT.

- 911. In general.
- 912. Constitutional and statutory provisions.
- 913. Operation and effect of suspension.

198. HAWKERS AND PEDDLERS**SUBJECTS INCLUDED**

Regulation of persons going from place to place selling or exchanging goods which they carry with them or themselves deliver

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Commerce, regulation of, see **COMMERCE**
 Itinerant merchants, license as mercantile business, see **LICENSES**
 Sales by traveling salesmen, see **PRINCIPAL AND AGENT, SALES**

- 1. Power to regulate.
- 2. Statutory and municipal regulations.
- 3. Who are hawkers or peddlers.
 - (1). In general.
 - (2). Sales by farmers of farm products.
 - (3). Sales of books.
 - (4). Sales to merchants for resale.
 - (6). Sales of meat by butchers.
 - (7). Sales by order or sample.
 - (8). Sale of sample.

- (9). Delivery of goods.
- 4. Licenses and taxes.
 - (1). In general.
 - (2). Persons entitled to license.
 - (3). Exemptions.
- 5. Validity of sales.
- 6. Penalties for violations of regulations.
- 7. Offenses.

198H. HEALTH**SUBJECTS INCLUDED**

Legal issues concerning the healing arts
 Regulation of health care and health care providers
 Liability of health care providers for medical malpractice, negligence, or breach of statutory duty
 Public health
 Government financial assistance to support health care, including Medicare and Medicaid
 "Wrongful life" and "wrongful birth" claims
 Nonconsensual health care and the right to die
 Compensation of physicians and other health care providers
 Health provider liability for injury to or by mentally disturbed patient

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Dead bodies, liability of hospital, see **DEAD BODIES**
 Duty to provide health care insurance benefits, see **INSURANCE**
 Health maintenance organizations as insurers, see **INSURANCE**
 Indoor air regulations, see **ENVIRONMENTAL LAW**
 Matters relating to care, commitment, training, custody, and disabilities of mentally disturbed persons, see **MENTAL HEALTH**
 Sewage and septic systems, see **ENVIRONMENTAL LAW**

198H. HEALTH

Smoking regulations, see ANTITRUST AND TRADE REGULATION, ENVIRONMENTAL LAW

Social workers, see LICENSES

I. REGULATION IN GENERAL,
 ⚭100–349.

(A) IN GENERAL, ⚭100–108.

(B) PROFESSIONALS, ⚭109–229.

(C) INSTITUTIONS AND FACILITIES,
 ⚭230–289.

(D) ORGANIZATIONS AND GROUPS,
 ⚭290–299.

(E) DRUGS; MEDICAL DEVICES
 AND INSTRUMENTS, ⚭300–349.

II. PUBLIC HEALTH, ⚭350–450.

III. GOVERNMENT ASSISTANCE,
 ⚭451–574.

(A) IN GENERAL, ⚭451–459.

(B) MEDICAL ASSISTANCE IN GENERAL; MEDICAID, ⚭460–519.

(C) FEDERAL MEDICAL ASSISTANCE
 TO THE ELDERLY (MEDICARE), ⚭520–559.

(D) HOSPITALS AND CLINICS,
 ⚭560–569.

(E) FEDERAL GRANTS, ⚭570–574.

**IV. RELATION BETWEEN PATIENT
 AND HEALTH CARE PROVIDER,**
 ⚭575–599.

**V. MALPRACTICE, NEGLIGENCE, OR
 BREACH OF DUTY,** ⚭600–899.

(A) IN GENERAL, ⚭600–609.

(B) DUTIES AND LIABILITIES IN
 GENERAL, ⚭610–649.

(C) PARTICULAR PROCEDURES,
 ⚭650–749.

(D) DUTIES AND LIABILITIES TO
 NON-PATIENTS, ⚭750–764.

(E) DEFENSES, ⚭765–779.

(F) PERSONS LIABLE, ⚭780–799.

(G) ACTIONS AND PROCEEDINGS,
 ⚭800–899.

**VI. CONSENT OF PATIENT AND SUB-
 STITUTED JUDGMENT,** ⚭900–934.

VII. COMPENSATION, ⚭935–974.

VIII. CRIMES, ⚭975–992.

I. REGULATION IN GENERAL.

(A) IN GENERAL.

100. In general.

101. Power to regulate in general.

102. Constitutional and statutory provisions.

103. — In general.

104. — Purpose.

I. REGULATION IN GENERAL.(Cont'd)

105. — Validity.

106. — Retroactive operation.

107. Preemption.

108. Practice of medicine by corporations or
 other business entities.

(B) PROFESSIONALS.

109. In general.

110. Who are health professionals.

111. Power to regulate professionals in gener-
 al.

112. Authority to admit to practice.

113. Necessity of registration, certification or
 license.

114. — In general.

115. — Physicians and surgeons.

116. — Psychologists.

117. — Psychiatrists.

118. — Obstetricians and midwives.

119. — Dentists and oral surgeons.

120. — Osteopaths.

121. — Eye care professionals.

122. — Podiatrists.

123. — Nurses.

124. — Physical therapists.

125. — Physicians' assistants.

126. — Spiritualists, naturopaths, and oth-
 er non-medical practitioners.

127. — Chiropractors.

128. — Massage professionals.

129. — Pharmacists.

130. — Medical device providers and pro-
 fessionals.

131. — Veterinarians.

132. — Persons already licensed else-
 where.

133. Capacity and qualifications in general.

134. Education in general.

Educational requirements for particular specialties, see
 ⚭135–153.

135. Eligibility for or entitlement to registra-
 tion, certification or license.

136. — In general.

137. — Physicians and surgeons.

138. — Psychologists.

139. — Psychiatrists.

140. — Obstetricians and midwives.

141. — Dentists and oral surgeons.

142. — Osteopaths.

198H. HEALTH**I. REGULATION IN GENERAL.(Cont'd)**

- 143. — Eye care professionals.
- 144. — Podiatrists.
- 145. — Nurses.
- 146. — Physical therapists.
- 147. — Physicians' assistants.
- 148. — Spiritualists, naturopaths, and other non-medical practitioners.
- 149. — Chiropractors.
- 150. — Massage professionals.
- 151. — Pharmacists.
- 152. — Medical device providers and professionals.
- 153. — Veterinarians.
- 154. — Persons licensed to practice in another jurisdiction.
- 155. Application.
- 156. Examinations.
Psychological testing or evaluations, or tests for good moral character, see ¶157.
- 157. Proceedings on application.
- 158. Judicial review.
- 159. Stay pending review.
- 160. Operation and effect of registration, certificate, or license.
- 161. Renewal of registration, license, or certificate.
- 162. Unauthorized practice.
Includes criminal offenses.
- 163. — In general.
- 164. — Physicians and surgeons.
- 165. — Psychologists.
- 166. — Psychiatrists.
- 167. — Obstetricians and midwives.
- 168. — Dentists and oral surgeons.
- 169. — Osteopaths.
- 170. — Eye care professionals.
- 171. — Podiatrists.
- 172. — Nurses.
- 173. — Physical therapists.
- 174. — Physicians' assistants.
- 175. — Spiritualists, naturopaths, and other non-medical practitioners.
- 176. — Chiropractors.
- 177. — Massage professionals.
- 178. — Pharmacists.
- 179. — Medical device providers and professionals.
- 180. — Veterinarians.

I. REGULATION IN GENERAL.(Cont'd)

- 181. — Professionals licensed elsewhere.
- 182. Proceedings for unauthorized practice.
Includes criminal prosecutions.
- 183. — In general.
- 184. — Nature of proceedings.
- 185. — Indictment, information, or complaint.
- 186. — Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.
 - (5). Weight and sufficiency.
- 187. — Trial or hearing.
- 188. — Sentence and punishment.
- 189. — Penalties; other remedies.
- 190. — Judicial review.
- 191. Regulation of professional conduct; boards and officers.
- 192. — In general.
- 193. — Advertising.
- 194. — Regulatory boards, officers, and examiners.
- 195. — Immunity of boards and officers.
- 196. — Records and duty to report; confidentiality in general.
Duty to report child abuse, see INFANTS.
- 197. — Duty to provide emergency treatment; penalties.
Civil liability for breach of duty, see ¶658.
- 198. — Pharmacists.
- 199. Fees and taxes.
- 200. Peer review in general.
See also ¶268 et seq.
- 201. Discipline, revocation, and suspension.
- 202. — In general.
- 203. — Power to act.
- 204. — Grounds in general.
- 205. — Negligence, malpractice, or incompetence.
- 206. — Patient records; confidentiality.
Civil liability for breach of duty, see ¶642.
- 207. — Criminal conviction or charges; effect of acquittal.
- 208. — Drug or alcohol abuse.
- 209. — Advertising or fraud; dishonesty.
- 210. — Relationship with patient; sexual conduct.
- 211. — Prescriptions; controlled substances.

198H. HEALTH**I. REGULATION IN GENERAL.(Cont'd)**

- 212. — Dealing with unqualified or unlicensed persons.
- 213. — Effect of proceedings or determinations in other jurisdiction.
- 214. Disciplinary proceedings.
- 215. — In general.
- 216. — Complaint, petition, or pleading.
- 217. — Discovery, investigation, subpoena.
- 218. — Evidence.
- 219. — Hearing.
- 220. — Composition of board or panel.
- 221. — Findings.
- 222. — Order, judgment, or remedy.
 - (1). In general.
 - (2). Fines or penalties.
 - (3). Collateral estoppel and res judicata.
- 223. — Review.
 - (1). In general.
 - (2). Scope of review.
- 224. Reinstatement.
- 225. Abuse registry.

(C) INSTITUTIONS AND FACILITIES.

- 230. In general.
- 231. Private or public status.
- 232. Power to regulate.
- 233. Power of local government.
- 234. Supervision by courts in general.
- 235. Establishment of hospitals and other facilities in general.
- 236. Licenses, permits, and certificates.
See also, ZONING AND PLANNING.
- 237. — In general.
- 238. — Authority to grant.
- 239. — Grounds and defenses.
- 240. — Need, public necessity.
- 241. — Application.
- 242. — Proceedings on application.
- 243. — Evidence.
- 244. — Conditions.
- 245. — Review.
- 246. — Persons entitled to challenge application or decision.
- 247. Discipline and revocation of license, permit, or certificate; closure.
- 248. — In general.
- 249. — Grounds.

I. REGULATION IN GENERAL.(Cont'd)

- 250. — Proceedings in general.
- 251. — Evidence.
- 252. — Determination.
- 253. — Review.
- 254. — Reinstatement.
- 255. Renewal of license, permit, or certificate.
- 256. Regulation of conduct in general.
- 257. Records and duty to report; confidentiality in general.
- 258. Duty to provide emergency care or admit; penalties.
Civil liability for breach of duty, see ¶658.
- 259. Officers and employees.
- 260. — In general.
- 261. — Appointment or election.
- 262. — Eligibility and qualification.
- 263. — Compensation and benefits.
- 264. — Duties and liabilities in general.
- 265. — Tenure in general.
- 266. — Adverse employment action; wrongful discharge.
- 267. Budgets and expenditures.
- 268. Staff privileges and peer review.
- 269. — In general.
- 270. — Peer review in general.
- 271. — Licenses and qualifications.
- 272. — Regulation by municipality.
- 273. — Suspension or termination of privileges; discipline.
- 274. — Liability or immunity.
- 275. — Actions and judicial review.
- 276. Nursing homes.
Rest homes and other residential facilities accommodating elderly persons but not primarily providing health care, see ASYLUMS AND ASSISTED LIVING FACILITIES.
- 277. Home health care.
- 278. Laboratories.

(D) ORGANIZATIONS AND GROUPS.

- Compensation to professionals, see VII. Regulation of health maintenance organizations in general, or as insurers, see INSURANCE. Regulation of "premium" rates, see INSURANCE.*
- 290. In general.
- 291. Purpose.
- 292. Power to regulate.
- 293. Supervision by courts in general.

198H. HEALTH

I. REGULATION IN GENERAL.(Cont'd)

- 294. Membership or affiliation with organization; contractual relationship.
- 295. Professional societies.

(E) DRUGS; MEDICAL DEVICES AND INSTRUMENTS.

Regulation of pharmacists in general, see HEALTH I(B). Malpractice or negligence of those prescribing or dispensing medicine, see HEALTH V; liability of pharmacists, see also PRODUCTS LIABILITY. Government payments for vaccine injury, see HEALTH ¶389.

- 300. In general.
- 301. Power to regulate in general.
- 302. Purpose and construction of statutes.
- 303. Drugs and devices regulated.
- 304. Licensing and registration.
- 305. Prescription requirement; ethical drugs.
- 306. Safety and effectiveness in general.
- 307. Adulteration and defects; unsanitary conditions.
- 308. Advertising and other representations.
Federal Trade Commission Act, see ANTITRUST AND TRADE REGULATION.
- 309. Labeling requirements.
- 310. — In general.
- 311. — What constitutes labeling.
- 312. — Requisites and adequacy of labeling.
- 313. — Exemptions.
- 314. — Misbranding.
- 315. Applications and approvals.
- 316. — In general.
- 317. — New drugs.
- 318. — Exemptions.
Includes "grandfathered" drugs and devices and investigational or experimental drugs.
- 319. — Generic and orphan drugs; market exclusivity.
- 320. — Effect of approval or non-approval; off-label use.
- 321. Withdrawal, suspension, revocation, or reconsideration.
- 322. Administrative proceedings and rule-making.
- 323. Judicial review or intervention.
- 324. Animal drugs.
- 325. Cosmetics.
- 326. Injunctions.
- 327. — In general.
- 328. — Preliminary injunctions.
- 329. Penalties.

I. REGULATION IN GENERAL.(Cont'd)

- 330. Seizure, forfeiture, and condemnation.
- 331. — In general.
- 332. — Proceedings.
- 333. — Evidence.

II. PUBLIC HEALTH.

- 350. In general.
- 351. Power to regulate.
- 352. — In general.
- 353. — Federal regulations.
- 354. — State and local regulations.
- 355. Constitutional, statutory, and regulatory provisions.
- 356. — In general.
- 357. — Purpose.
- 358. — Validity.
- 359. — Retroactive operation.
- 360. National board.
- 361. State and local boards, districts, and employees.
- 362. — In general.
- 363. — Establishment in general.
- 364. — Appointment and tenure.
- 365. — Compensation, expenses, and reimbursement.
- 366. — Authority in general.
- 367. — Duties and liabilities.
- 368. — Actions by or against.
- 369. Sanitary districts, boards, officers, and employees.
- 370. Administrative proceedings in general.
- 371. — In general.
- 372. — Rules and regulations in general.
- 373. — Notice.
- 374. — Hearings in general.
- 375. — Summary proceedings.
- 376. — Orders and other decisions in general.
- 377. Abatement.
- 378. Penalties and fines.
- 379. Judicial review of administrative proceedings.
- 380. — In general.
- 381. — Administrative decisions reviewable.
- 382. — Scope of judicial review of agency decision.
- 383. Contagious and infectious diseases.

198H. HEALTH**II. PUBLIC HEALTH.(Cont'd)**

- 384. — In general.
- 385. — Vaccination and immunization.
- 386. — Quarantine.
- 387. — Testing.
- 388. — Human immuno-deficiency virus and acquired immune deficiency syndrome.
- 389. — Vaccine injury programs; government liability.
National Childhood Vaccine Injury Act review by Court of Federal Claims of proceedings before special master, see UNITED STATES ¶1054.
- 390. Unsafe or unhealthful premises.
- 391. — In general.
- 392. — Buildings, structures, and building components.
- 393. — Protection against fire; exits.
- 394. — Adult establishments.
- 395. Records, reports, and disclosure.
- 396. — In general.
- 397. — Birth certificates.
- 398. — Death certificates.
- 399. — Contagious or infectious diseases.
- 400. — Human immuno-deficiency virus and acquired immune deficiency syndrome.
- 401. Charges for inspection and permits.
- 402. Injury compensation funds.
Regulation of malpractice funds as insurance, see INSURANCE ¶1022, 1250; *excess coverage under malpractice funds, see INSURANCE* ¶2394.

III. GOVERNMENT ASSISTANCE.**(A) IN GENERAL.**

- 451. In general.
- 452. Constitutional and statutory provisions.
- 453. — In general.
- 454. — Purpose.
- 455. — Validity.
- 456. — Retroactive operation.
- 457. Preemption.

(B) MEDICAL ASSISTANCE IN GENERAL; MEDICAID.

- 460. In general.
- 461. Medicaid and similar programs in general.
- 462. State participation in federal programs.
- 463. Rules and regulations in general.
- 464. — In general.

III. GOVERNMENT ASSISTANCE.(Cont'd)

- 465. — Manuals and handbooks.
- 466. Eligibility for benefits.
- 467. — In general.
- 468. — Indigency in general.
- 469. — Residency.
- 470. — Aliens.
- 471. — Resources.
 - (1). In general.
 - (2). Income in general.
 - (3). Deductions and allowances in general.
 - (4). Transfer period.
 - (5). Marital assets in general.
 - (6). Trusts.
 - (7). Homes; real estate.
 - (8). Public benefits.
- 472. Benefits and services covered.
- 473. — In general.
- 474. — Necessity in general.
- 475. — Cosmetic or elective surgery.
- 476. — Mental health services.
- 477. — Rehabilitative services.
- 478. — Medical equipment; wheelchairs.
- 479. — Transportation services; vehicles.
- 480. — Abortion or birth control.
- 481. — Sex change; gender disorders.
- 482. — Medication.
- 483. — Experimental procedures.
- 484. Providers.
- 485. — In general.
- 486. — Licensing and credentialing in general.
- 487. — Reimbursement.
 - (1). In general.
 - (2). Rates in general.
 - (3). Nursing home and hospital rates in general.
 - (4). Costs.
 - (5). Payment and overpayment.
- 488. — Assignment of claims.
- 489. — Suspension or termination of provider participation; penalties.
- 490. Recovery back or recoupment of payments.
- 491. — In general.
- 492. — Liens in general.
- 493. — Aid recipient, recovery from.

198H. HEALTH**III. GOVERNMENT ASSISTANCE.(Cont'd)**

- 494. — Estate of aid recipient, recovery from.
- 495. — Spouse of aid recipient, recovery from.
- 496. — Third persons, recovery from.
 - (1). In general.
 - (2). Tortfeasors in general.
 - (3). Malpractice tortfeasors.
- 497. — Settlements or judgments, recovery from.
- 498. — Recovery in excess of amount of benefits received.
- 499. Administrative proceedings.
- 500. — In general.
- 501. — Applications for benefits.
- 502. — Notice and hearing.
- 503. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 504. — Administrative review.
- 505. — Providers, proceedings regarding.
 - (1). In general.
 - (2). Suspension or termination of provider participation.
- 506. Judicial review; actions.
- 507. — In general.
Injunctive relief, see INJUNCTION \S 1289.
- 508. — Preservation of issue in general.
- 509. — Exhaustion of administrative remedies.
- 510. — Standing.
- 511. — Time.
- 512. — Scope of judicial review.
 - (1). In general.
 - (2). De novo review.
 - (3). Abuse of discretion.
 - (4). Arbitrary or capricious decision.
 - (5). Substantial evidence.
 - (6). Questions of law.

(C) FEDERAL MEDICAL ASSISTANCE TO THE ELDERLY (MEDICARE).

- 520. In general.
- 521. Rules and regulations in general.
- 522. — In general.
- 523. — Manuals and handbooks.
- 524. — Construction.

III. GOVERNMENT ASSISTANCE.(Cont'd)

- 525. Eligibility for benefits.
- 526. Benefits or services covered.
- 527. — In general.
- 528. — Extended, continuing, supportive, or custodial care.
- 529. — Medical equipment in general.
- 530. — Dental care.
- 531. — Experimental procedures or devices.
- 532. Providers.
 - (1). In general.
 - (2). Rates in general.
 - (3). New providers in general.
 - (4). Costs incurred.
 - (5). Medical education expenses.
 - (6). Providers serving low-income patients.
- 536. — Assignment of claims.
- 537. — Suspension or termination of provider participation; penalties.
- 538. Recovery back or recoupment of payments.
- 539. — In general.
- 540. — Liens in general.
- 541. — Aid recipient, recovery from.
- 542. — Estate of aid recipient, recovery from.
- 543. — Spouse of aid recipient, recovery from.
- 544. — Third persons, recovery from.
- 545. — Medicare as second payer.
- 546. Administrative proceedings.
- 547. — In general.
- 548. — Notice and hearing.
- 549. — Evidence.
- 550. — Questions of law and fact.
- 551. — Findings and conclusions.
- 552. — Reconsideration and reopening.
- 553. — Administrative review.
- 554. Judicial review; actions.
- 555. — In general.
- 556. — Right to and availability of judicial remedy.
 - (1). In general.
 - (2). Finality requirement.

198H. HEALTH**III. GOVERNMENT ASSISTANCE.**(Cont'd)

- (3). Exhaustion of administrative remedies.
- (4). Standing.
- 557. — Scope of review.
 - (1). In general.
 - (2). Deference to agency in general.
 - (3). Tortfeasors in general.
 - (4). Abuse of discretion.
 - (5). Arbitrary or capricious determination.
 - (6). Substantial evidence.
 - (7). Questions of law.

(D) HOSPITALS AND CLINICS.

- 560. Public assistance.
- 561. — In general.
- 562. — State assistance.
- 563. — Federal assistance.
- 564. Duty of hospital which receives funding to provide care to the indigent.
- 565. Emergency medical treatment.
Civil liability for violations, see ¶658; duties in general and penalties for violations, see ¶197 and 258.
- 566. Nursing homes.
Rest homes and other residential facilities accomodating elderly persons but not primarily providing health care, see ASYLUMS AND ASSISTED LIVING FACILITIES.

(E) FEDERAL GRANTS.

- 570. In general.

IV. RELATION BETWEEN PATIENT AND HEALTH CARE PROVIDER.

- 575. In general.
- 576. Nature and existence of relation.
Professional-patient relationship as requisite to duty, see ¶615.
- 577. Termination of relationship.
- 578. Fiduciary duty.
- 579. Contract of employment.
- 580. Duty of patients.
- 581. Duty of health professional to advocate on patient's behalf.
- 582. Patients' rights.
Private suit for personal injuries to a patient resulting from violation of a patient's bill of rights statute by a health care professional or facility, see Part V.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.**(A) IN GENERAL.**

- 600. In general.
- 601. Constitutional and statutory provisions.
- 602. — In general.
- 603. — Purpose.
- 604. — Validity.
- 605. — Retroactive operation.
- 606. — Limitation of amount of liability.
See also ¶834(1).
- 607. Preemption.
- 608. What law governs.

(B) DUTIES AND LIABILITIES IN GENERAL.

- 610. In general.
- 611. Elements of malpractice or negligence in general.
- 612. Duty.
- 613. — In general.
- 614. — Necessity and existence of duty.
- 615. — Professional-patient relationship as requisite to duty.
- 616. — Duty to provide care to indigents.
- 617. Standard of care.
- 618. — In general.
- 619. — Requisite skill, training, qualifications.
- 620. — Locality rule.
- 621. — Specialists.
- 622. Breach of duty.
- 623. — In general.
- 624. — Medical judgment.
- 625. — Warranty; ensuring result.
- 626. — Heightened degrees of care.
- 627. — Sudden emergency.
- 628. School of medicine.
- 629. Abandonment of patient.
- 630. Proximate cause.
- 631. — In general.
- 632. — Proximate cause of death.
- 633. — Loss of chance and increased risk of harm.
- 634. Necessity and existence of injury.
- 635. Instructions or directions to patient.
- 636. Duty to warn patient under abortion statute or regulation.
- 637. Diagnosis in general.
- 638. Duty to inform patient of diagnosis.

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Informed consent, see part VI.

- 639. — In general.
- 640. — Delay in informing patient.
- 641. Referral of patient.
- 642. Confidentiality; patient records.
Records and duty to report in general, see ¶196.
- 643. Sexual activity.

(C) PARTICULAR PROCEDURES.

- 650. In general.
- 651. Premises liability in general.
- 652. Nurses and physician's assistants in general.
- 653. Paramedics in general.
- 654. Medical care during emergency transport.
- 655. Hospitals in general.
Liability for negligence of physician, see ¶782.
- 656. — In general.
- 657. — Emergency room care in general.
- 658. — Duty as to indigents; screening and dumping.
Duties in general and penalties, see ¶197 and 258.
- 659. — Premises liability.
Injuries to visitors and other non-patients, see V(D).
- 660. — Negligent hiring or supervision.
- 661. — Lack of, or defective, equipment, supplies, or medicine.
- 662. Nursing homes.
- 663. Hospices.
- 664. Appliances and devices in general.
- 665. Surgery in general.
- 666. Objects left in body during surgery.
See also part V(F).
- 667. Internal medicine in general.
- 668. Respiratory.
- 669. Infections and infectious diseases.
- 670. Eyes.
- 671. Ear, nose, and throat.
- 672. Plastic surgery; body part modification.
- 673. Diagnosis and treatment of cancer.
- 674. Orthopedics; fractures, sprains.
- 675. Cardiology; circulatory system.
- 676. Miscellaneous medical procedures.
- 677. — In general.
- 678. — Dermatology.
- 679. — Allergies.
- 680. — Endocrinology; glands.
- 681. — Neurology; nervous system.
- 682. Dentistry and oral surgery.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- 683. Obstetrics, gynecology, and reproductive health.
- 684. — In general.
- 685. — Failure or delay in diagnosing pregnancy.
- 686. — Wrongful conception or pregnancy resulting in birth of healthy child.
- 687. — "Wrongful life" or birth of unhealthy child.
 - (1). In general.
 - (2). Liability to parent.
 - (3). Liability to child.
- 688. Podiatry.
- 689. Osteopathy.
- 690. Chiropractic.
- 691. Spiritual treatment.
- 692. — In general.
- 693. — Christian Scientists.
- 694. Massage.
- 695. Mental health.
Liability to third party for actions of patient, see ¶753. Liability of owner or operator of asylum or assisted living facility for injuries to resident, see ASYLUMS AND ASSISTED LIVING FACILITIES. See also MENTAL HEALTH.
- 696. — In general.
- 697. — Psychiatric treatment in general.
- 698. — Substance abuse treatment.
- 699. — Abuse of, or physical injury to patient in general.
- 700. — Protection of patient from other patients.
- 701. — Failure to commit patient; premature release.
- 702. — Escaping patients, injuries to.
- 703. — Suicide or self-inflicted injuries.
 - (1). In general.
 - (2). Institutionalized patients.
- 704. Vaccination or immunization.
- 705. Laboratory work.
- 706. Pharmacological services.
Liability of pharmacist for injury caused by dispensing of drugs, see also PRODUCTS LIABILITY.
- 707. Anesthesiology.
- 708. Radiology, ultrasound, and other medical imaging.
- 709. Examinations on behalf of third parties.
 - (1). In general.
 - (2). Employment.

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(3). Insurance; workers' compensation.

710. Veterinarians.

(D) DUTIES AND LIABILITIES TO NON-PATIENTS.

750. In general.

751. Abuse of patient.

Abuse of child patient, see INFANTS.

752. Acts of patients in general.

753. Acts of mental health patients.

Liability of owner or operator of asylum or assisted living facility for injuries to non-residents, see ASYLUMS AND ASSISTED LIVING FACILITIES.

754. — In general.

755. — Duty to warn in general.

756. — Escaping patients.

757. — Released or non-committed patients.

758. — Hospitals, clinics, and other institutions.

(E) DEFENSES.

765. In general.

766. Contributory and comparative negligence.

767. Assumption of risk.

768. Immunity in general.

769. Good Samaritan doctrine.

770. Official or governmental immunity.

771. Immunity or liability limitation granted to charities.

See also CHARITIES ¶45(2).

(F) PERSONS LIABLE.

780. In general.

781. Hospitals or clinics.

Liability of a hospital for actions of health care professionals which allegedly violate statutory requirements to provide emergency care, see ¶657, 658.

782. — In general.

783. — Mental health treatment.

784. Nursing homes.

785. Health maintenance organizations.

786. Multiple professionals or health care workers in general.

787. Surgeons.

(G) ACTIONS AND PROCEEDINGS.

800. In general.

801. Jurisdiction.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

802. Venue.

803. Conditions precedent in general.

804. Affidavits of merit or meritorious defense; expert affidavits.

805. Sanctions for failing to file affidavits; dismissal with or without prejudice.

806. Malpractice panels in general.

807. Notice.

808. Bonds.

809. Judicial review of panel decisions.

810. Right of action; standing.

811. Limitations; time requirements.

812. Parties.

813. Pleading.

814. Issues, proof, and variance.

815. Evidence.

816. — In general.

817. — Presumptions.

818. — Res ipsa loquitur.

819. — Burden of proof.

820. — Admissibility.

821. — Necessity of expert testimony.

Who qualifies as an expert, admissibility of expert testimony, and examination of experts, see EVIDENCE.

(1). In general.

(2). Standard of practice and departure therefrom.

(3). Proximate cause.

(4). Gross or obvious negligence and matters of common knowledge.

(5). Particular procedures.

822. — Weight and sufficiency in general.

(1). In general.

(2). Degree of proof.

(3). Proximate cause.

823. — Weight and sufficiency, particular cases.

(1). In general.

(2). Hospitals in general; premises liability.

(3). Emergency room care.

(4). Protection of patients.

(5). Surgical operations in general.

(6). Infections and infectious diseases.

(7). Orthopedics, fractures, sprains.

(8). Diagnosis and treatment of cancer.

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- (9). Obstetrics, gynecology, and reproductive health.
- (10). Dentistry and oral surgery.
- (11). Cardiology; circulatory system.
- (12). Radiology, ultrasound, and other medical imaging.
- (13). Pharmacological services.
Liability of a pharmacist for injury caused by the dispensing of drugs, see also PRODUCTS LIABILITY.
- (14). Mental health treatment.
- (15). Persons liable.
- 824. Questions of law or fact and directed verdicts.
- 825. — In general.
- 826. — Proximate cause.
- 827. Instructions.
- 828. Damages.
- 829. — In general.
- 830. — Measure and elements.
- 831. — Exemplary or punitive damages.
- 832. — Amount.
- 833. — Loss of chance and increased risk of harm.
- 834. — Statutory limits on damages awards.
 - (1). In general.
 - (2). Wrongful death.
- 835. Verdict and findings.
- 836. Costs and fees.

VI. CONSENT OF PATIENT AND SUBSTITUTED JUDGMENT.

- 900. In general.
- 901. What law governs.
- 902. Constitutional and statutory provisions.
- 903. Right of patient to refuse treatment in general.
- 904. Consent of patient.
- 905. — In general.
- 906. — Informed consent in general; duty to disclose.
- 907. — What constitutes medical battery in general.
- 908. — Surgical procedures.
- 909. — Emergency exception.
- 910. Substituted judgment; role of guardian or others in general.

VI. CONSENT OF PATIENT AND SUBSTITUTED JUDGMENT.(Cont'd)

- 911. Minors in general; consent of parent or guardian.
- 912. Incompetent persons in general.
- 913. Terminal illness; removal of life support.
- 914. — In general; right to die.
- 915. — Substituted judgment; role of courts, physicians, guardians, family or others.
- 916. — Competent patients; living wills and other prior indications.
- 917. Duty to revive; effort required.
- 918. Dialysis.
- 919. Blood transfusions.
- 920. Amputations.
- 921. Persons liable.
- 922. Proceedings and actions.
- 923. — In general.
- 924. — Presumptions.
- 925. — Burden of proof.
- 926. — Weight and sufficiency of evidence.
- 927. — Jury questions.
- 928. — Damages.

VII. COMPENSATION.

- 935. In general.
- 936. What law governs.
- 937. Constitutional and statutory provisions.
- 938. Regulation of rates and charges.
- 939. — In general.
- 940. — Hospitals.
- 941. — Health maintenance and similar entities.
- 942. Contracts for services.
- 943. Quasi contract, quantum meruit, and emergency assistance.
- 944. Adequacy of services; consideration.
- 945. Unauthorized practitioners.
- 946. Estoppel.
- 947. Amount.
- 948. Fee-sharing; referral fees.
- 949. Actions concerning compensation.
- 950. — In general.
- 951. — Nature and form of remedy.
- 952. — Standing.
- 953. — Defenses; limitations.

198H. HEALTH**VII. COMPENSATION.**(Cont'd)

- 954. — Parties.
- 955. — Pleading.
- 956. — Evidence.
- 957. — Questions for jury.
- 958. — Instructions.
- 959. Liens.
- 960. — In general.
- 961. — Hospitals.

VIII. CRIMES.

Physician-assisted suicide, see SUICIDE.

- 975. In general.
- 976. Constitutional and statutory provisions.
- 977. Unsafe or unhealthful premises.
- 978. Fraud.
- 979. — In general.
- 980. — Medicare fraud.
- 981. — Medicaid fraud.
- 982. Pharmaceuticals, drugs, and medical devices.
- 983. Vaccines, immunizations.
- 984. Records and duty to report.
- 985. Communicable diseases.
- 986. Failure to provide adequate care.
- 987. Prosecutions in general.
- 988. Indictment and information.
- 989. Evidence.
- 990. Trial in general.
- 991. Questions for jury.
- 992. Instructions.

200. HIGHWAYS**SUBJECTS INCLUDED**

- Roads open for free passage to the public, established for public benefit
- Nature and scope of power to establish and maintain such roads in general
- Constitutional and statutory provisions relating thereto
- Appointment and removal, rights, powers, duties, and liabilities of highway boards, officers, etc.

Establishment of such roads by statutory proceedings, construction, repair, and improvement, and alteration, vacation, and abandonment thereof

Taxes for highway purposes and local assessments for particular roads

Title to and rights in the land occupied

Removal of and liabilities for obstructions, encroachments, etc.

Use of such roads, and liabilities for injuries from defects, obstructions, etc., therein, and for injuries from violations of the law of the road causing collisions, etc., not involving automobiles

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Automobiles, operation on highways, see AUTOMOBILES

Boundaries, highways as, see BOUNDARIES

Bridges, see BRIDGES

Dedication of lands to public use as highways, see DEDICATION

Eminent domain, exercise of power of, see EMINENT DOMAIN

Private persons, ways for accommodation of, see EASEMENTS

— Established by public authority, see PRIVATE ROADS

Railroads on or crossing highways, see RAILROADS, URBAN RAILROADS

Streets in incorporated cities, etc., see MUNICIPAL CORPORATIONS

Toll roads and turnpikes, see TURNPIKES AND TOLL ROADS

I. IN GENERAL; ESTABLISHMENT, ¶0.5–68.

(A) IN GENERAL, ¶0.5.

(B) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION, ¶1–17.

(C) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS, ¶18–68.

II. ALTERATION, ¶69–73.

III. VACATION, ¶75–78.

IV. ABANDONMENT, ¶79.1–79.7.

V. TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS, ¶80–89.

VI. HIGHWAY DISTRICTS AND OFFICERS, ¶90–97.

200. HIGHWAYS

VII. CONSTRUCTION, IMPROVEMENT, AND REPAIR, ⚡97.1–120.5.

VIII. TAXES, ASSESSMENTS, AND WORK ON HIGHWAYS, ⚡121–151.

IX. REGULATION AND USE FOR TRAVEL, ⚡153–216.

(A) OBSTRUCTIONS AND ENCROACHMENTS, ⚡153–164.

(B) USE OF HIGHWAY AND LAW OF THE ROAD, ⚡165–186.

(C) INJURIES FROM DEFECTS OR OBSTRUCTIONS, ⚡187–216.

I. IN GENERAL; ESTABLISHMENT.

(A) IN GENERAL.

0.5. Highways in general.

(B) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION.

1. In general.
2. Constitutional and statutory provisions.
3. Against whom prescription may be claimed.
4. Land subject to prescription.
5. Mode and extent of use.
6. Duration and continuity of use.
 - (1). In general.
 - (2). Interruption of use.
7. Adverse character of use in general.
 - (1). In general.
 - (2). Maintenance or repair by public authorities.
 - (3). Use of land varying from actual location of highway.
8. Claim or color of right to use.
9. Use and recognition of pre-existing road or other way.
10. Use where proceedings to establish highway defective.
11. Operation and effect.
12. — In general.
13. — Character and use of highway.
14. — Extent of highway.
15. Ascertainment and entry of record of highway by user.
16. Pleading existence of highway.
17. Evidence as to existence of highway.

(C) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS.

18. In general.

I. IN GENERAL; ESTABLISHMENT.(Cont'd)

19. Constitutional and statutory provisions.
20. Necessity and utility of road.
21. Establishment by legislative act.
22. Jurisdiction and powers of local authorities.
23. — In general.
24. — Roads in different jurisdictions.
25. Establishment by ordinance or resolution of local authority.
26. Amendment or repeal of statute pending proceedings.
28. Parties.
 - (1). In general.
 - (2). Number and qualifications of petitioners.
29. Petition or other application.
 - (.5). In general.
 - (1). Prerequisite to jurisdiction.
 - (2). Application relating to two or more roads.
 - (3). Sufficiency of application in general.
 - (4). Averments as to parties and ownership of land.
 - (5). Description of road.
 - (6). Amendments.
 - (7). Objections and waiver thereof.
 - (8). Withdrawal.
30. Notice.
 - (.5). In general.
 - (1). Necessity of notice.
 - (2). Time of notice.
 - (3). Requisites and sufficiency of notice in general.
 - (4). Description of road.
 - (5). Service or posting of notice in general.
 - (6). Persons entitled to notice.
 - (7). Proof of service or posting.
 - (8). Objections and waiver thereof.
31. Appearance and representation by attorney.
32. Remonstrances or answers to petition.
33. Conduct of proceedings on application in general.
34. Dismissal of proceedings.
35. Commissioners or viewers.
36. — In general.

200. HIGHWAYS**I. IN GENERAL; ESTABLISHMENT.(Cont'd)**

- 37. — Appointment and qualifications.
 - (.5). In general.
 - (1). Appointment and removal.
 - (2). Eligibility.
 - (3). Oath.
 - (4). Objections and waiver thereof.
- 38. — Notice of proceedings.
 - (1). In general.
 - (2). Objections and waiver thereof.
- 39. — Acts and proceedings in general.
- 40. — View.
- 41. — Report and proceedings thereon.
 - (.5). In general.
 - (1). Form, sufficiency and validity of report in general.
 - (2). Report as to damages and cost.
 - (3). Certainty and sufficiency of description of road.
 - (4). Return of report and proceedings thereon in general.
 - (5). Time for making report, and effect of delay or failure to report.
- 42. Determination as to necessity and utility of road.
- 43. Location of road.
- 44. — In general.
- 44.1. — Variance from location described in petition, notice, or order.
- 45. — Township or section lines.
- 46. — Exemption of particular species of property.
 - (1). In general.
 - (2). Existing roads and other lands owned by county.
- 47. Width of road.
- 48. Laying out road.
- 49. — In general.
- 50. — Proceedings of commissioners, viewers, or surveyors.
- 51. — Consent of landowners.
- 52. Determination of character of road.
- 53. Judgment or order establishing road.
 - (1). In general.
 - (2). Description of location, and specification of width.
 - (3). Amendment or setting aside.
- 54. Record of proceedings.

I. IN GENERAL; ESTABLISHMENT.(Cont'd)

- 55. Defects and objections and waiver thereof.
- 56. Curative statutes.
- 57. Appeal and error.
- 58. — In general.
- 58.1. — Right of review; appellate jurisdiction.
- 58.2. — Persons entitled to appeal.
- 58.3. — Decisions reviewable.
- 58.4. — Presentation and reservation of grounds for review.
- 58.5. — Parties.
- 58.6. — Proceedings for transfer.
- 58.7. — Record and proceedings not in record.
- 58.8. — Effect of appeal.
- 58.9. — Hearing in general.
- 58.10. — Scope and extent of review.
- 58.11. — Dismissal of appeal.
- 58.12. — Disposition of cause.
- 59. — Hearing de novo.
- 60. Certiorari to review proceedings.
- 61. Costs and expenses of proceedings.
- 62. Conclusiveness of decision.
- 63. Collateral attack.
- 64. Restraining opening of road.
- 65. Operation and effect.
- 66. — In general.
- 67. — Character and use of highway.
- 68. Pleading and evidence as to existence of highway.

II. ALTERATION.

- 69. Alteration of course, width, or grade.
- 70. — In general.
- 71. — Power to alter.
- 72. — Proceedings.
 - (1). In general.
 - (2). Petition, notice, and appearance.
 - (3). Remonstrances.
 - (4). Hearing and determination.
 - (5). Commissioners or viewers.
 - (6). Judgment or order.
 - (7). Appeal and certiorari.
 - (8). Collateral attack.
- 73. — Operation and effect.

200. HIGHWAYS**III. VACATION.**

- 75. In general.
- 75.1. Right to vacate and grounds therefor in general.
- 75.2. Contracts to discontinue.
- 75.3. Discontinuance by vote.
- 76. Power to vacate.
- 77. Proceedings.
 - (1). In general.
 - (2). Petition and parties.
 - (3). Notice and appearance.
 - (4). Remonstrances.
 - (5). Hearing and determination.
 - (6). Commissioners or viewers.
 - (7). Judgment or order and record.
 - (8). Restraining discontinuance.
 - (9). Appeal and certiorari.
 - (10). Costs and expenses.
 - (11). Collateral attack.
- 78. Operation and effect.

IV. ABANDONMENT.

- 79.1. In general.
- 79.2. Nonuser in general.
- 79.4. Failure to open.
- 79.5. Nonuser of part of road.
- 79.6. Erection of gates, bars, or other structures.
- 79.7. Operation and effect.

V. TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.

- 80. In general.
- 81. Reversion on discontinuance of highway.
- 82. Deviation of travel from impassable highway to adjoining land.
- 83. Rights as to soil, trees, grass, minerals and other materials within highway.
- 84. Lateral support.
- 85. Right of access.
- 86. Right to use of road.
- 87. Rights and remedies as to obstructions and injuries to road.
- 88. Use of highway for other public purposes.
- 89. Use of highway for other purposes by abutting owner.

VI. HIGHWAY DISTRICTS AND OFFICERS.

- 90. Creation, existence, and powers of districts.
- 91. Creation and organization of road boards.
- 92. Creation and abolition of offices.
- 93. Appointment, qualification, and tenure of officers.
- 94. Compensation and expenses and personal interest in contracts.
- 95. Authority and powers.
 - (1). In general.
 - (2). Powers as to indebtedness and expenditures.
- 95.1. Proceedings.
- 96. Duties and liabilities.
 - (1). In general.
 - (2). Liabilities for penalties.
 - (3). Criminal responsibility.
- 97. Liabilities on official bonds.

VII. CONSTRUCTION, IMPROVEMENT, AND REPAIR.

- 97.1. In general.
- 97.5. Constitutional and statutory provisions.
- 98. Necessity for opening and constructing.
- 99. Authority and duty to construct.
 - 99.1. Highway funds.
 - 99.5. Existence and character of road.
- 100. Compelling opening and construction.
- 101. Proceedings to open in general.
- 102. Removal of fences and buildings.
- 103. Mode and plan of construction or improvement in general.
 - Environmental impact statements and environmental regulations in general, see ENVIRONMENTAL LAW.*
- 103.1. — In general.
- 103.2. — Protected areas; parklands and historic sites.
- 104. Mode of making alterations.
- 105. Authority and duty to improve, maintain and repair.
 - (1). In general.
 - (2). Roads in different jurisdictions or within municipalities.
- 106. Compelling improvement or repair and remedies for breach of duty in that respect.
- 107. Proceedings for improvement of highways and for construction of free gravel roads or turnpikes.

200. HIGHWAYS**VII. CONSTRUCTION, IMPROVEMENT,
AND REPAIR.(Cont'd)**

- (1). In general.
- (2). Submission of question to vote.
- (3). Appeal.
- (4). Collateral attack.
- 108. Criminal responsibility for failure to maintain or repair.
- 109. Materials for construction or repair.
- 110. Appliances and machinery for construction and repair.
- 111. Work of construction or repair.
- 112. — In general.
- 113. — Contracts.
 - (1). In general.
 - (4). Performance of contract and payment of compensation.
 - (5). Contractors' bonds and liability thereon.
- 114. Damages from construction or repair.
- 115. — In general.
- 116. — Deduction or set-off of benefits.
- 117. Liabilities for expenses or damages.
- 118. — In general.
- 119. — Apportionment.
- 120. Drainage.
 - (.5). In general.
 - (1). Power and duty as to drainage.
 - (2). Rights and remedies of abutting owners in general.
 - (3). Injunction.
 - (4). Damages, and actions therefor.
 - (5). Drainage districts.
- 120.5. Lighting.

**VIII. TAXES, ASSESSMENTS, AND
WORK ON HIGHWAYS.**

- 121. Power of taxation and assessment in general.
- 122. Constitutional and statutory provisions.
- 123. Highway taxes.
 - 123.1. — In general.
- 124. — Purposes and grounds in general.
- 125. — Amount of tax.
- 126. — Persons and property liable.
- 127. — Levy and assessment.
 - (1). In general.
 - (2). Determination and statement of rate or amount of levy in general.

**VIII. TAXES, ASSESSMENTS, AND WORK
ON HIGHWAYS.(Cont'd)**

- (3). Levy of greater amount than prescribed.
- 128. — Payment, collection, and enforcement.
- 129. — Remedies for erroneous taxation.
- 130. — Disposition of proceeds.
- 130.5. — Rights and remedies of taxpayer.
- 131. Local assessments and special taxes.
 - 131.1. — In general.
- 132. — Purposes in general.
- 134. — Consent of landowners.
- 135. — Amount of assessment.
- 136. — Property liable and amount of benefit.
- 137. — Objections and estoppel or waiver.
- 138. — Proceedings for assessment.
- 139. — Mode of assessment in general.
- 140. — Apportionment of benefits and expenses.
- 141. — Certificate for work done against specific property.
- 142. — Confirmation, correction, or setting aside.
- 143. — Curative statutes.
- 144. — Reassessment or additional assessment.
- 145. — Lien.
- 146. — Payment and recovery of assessment paid.
- 147. — Collection and enforcement.
- 148. — Remedies for wrongful enforcement.
- 149. — Disposition of proceeds.
- 150. Poll taxes.
- 151. Work on road by taxpayers.
 - (1). In general.
 - (2). Criminal responsibility for failure to work.

IX. REGULATION AND USE FOR TRAVEL.**(A) OBSTRUCTIONS AND ENCROACHMENTS.**

- 153. Obstruction of use of highway in general.
- 153.5. Billboards and highway beautification in general.
- 154. Buildings or other structures encroaching on highway.

200. HIGHWAYS**IX. REGULATION AND USE
FOR TRAVEL.(Cont'd)**

- 155. Persons entitled to remedies.
 - 156. Persons liable for obstruction or encroachment.
 - 157. Removal.
 - 158. Abatement.
 - 159. Injunction.
 - (.5). In general.
 - (1). Grounds of relief.
 - (2). Proceedings.
 - 160. Actions for damages.
 - (1). In general.
 - (2). Parties, pleading, and evidence.
 - (3). Trial and damages.
 - 161. Actions for penalties.
 - 162. Criminal responsibility.
 - 162.1. — In general.
 - 163. — Offenses.
 - (1). In general.
 - (2). Nature, existence, and legality of road.
 - (3). Knowledge, intent, and malice.
 - 164. — Prosecution and punishment.
 - (.5). In general.
 - (1). Jurisdiction.
 - (2). Indictment or information.
 - (3). Evidence.
 - (4). Trial.
 - (5). Punishment and review.
- (B) USE OF HIGHWAY AND LAW OF THE ROAD.**
- 165. Power to control and regulate.
 - 166. Statutory and local regulations.
 - 167. Right to use.
 - 170. Character and control of horses.
 - 171. Care required in use of highway.
 - 172. — In general.
 - 173. — As to persons on foot.
 - 174. — As to children and others under disability.
 - 175. Meeting and crossing.
 - 176. Overtaking and passing.
 - 177. Excessive speed and racing.
 - 178. Approaching railroad.
 - 179. Stopping and standing.
 - 180. Horses or other animals not under control, and runaways.
 - 181. Frightening animals.

**IX. REGULATION AND USE
FOR TRAVEL.(Cont'd)**

- 182. Injuries to highways.
 - 183. Liabilities for injuries.
 - 183.5. Liens on vehicles for injuries.
 - 184. Actions for injuries.
 - (.5). In general.
 - (1). Pleading.
 - (2). Evidence.
 - (3). Questions for jury.
 - (4). Instructions.
 - (5). Damages.
 - (6). Verdict and findings.
 - 185. Penalties for violations of regulations.
 - 186. Offenses incident to travel.
- (C) INJURIES FROM DEFECTS OR OBSTRUCTIONS.**
- Excludes all automobile cases, see AUTOMOBILES VI.*
- 187. Nature and grounds of liability.
 - (1). In general.
 - (2). Nature and existence of road or way.
 - (3). Liability of state.
 - 188. Care required as to condition of highway.
 - 189. Statutory provisions.
 - 190. Duty and ability to repair.
 - 191. Sufficiency and safety of highway in general.
 - 192. Defects or obstructions causing injury.
 - 193. Notice of defects or obstructions.
 - 194. Precautions against injury.
 - 195. Failure to prevent or remove obstruction.
 - 196. Proximate cause of injury.
 - 197. Contributory negligence.
 - (.5). In general.
 - (1). Care required in general.
 - (2). Competency of person injured.
 - (3). Knowledge of defect or danger.
 - (4). Duty to observe defect or danger.
 - (5). Leaving traveled way.
 - (6). Contributory negligence as proximate cause of injury.
 - 198. Liabilities of local authorities and officers.
 - 199. Liabilities of abutting owners.
 - 200. Liabilities of persons causing defects or obstructions.

200. HIGHWAYS**IX. REGULATION AND USE
FOR TRAVEL.**(Cont'd)

201. Actions for injuries.
- 201.1. — In general.
202. — Grounds and conditions precedent in general.
203. — Notice of claim for injury.
204. — Defenses.
205. — Jurisdiction and venue.
206. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
207. — Parties.
208. — Pleading.
- (1). In general.
- (2). Issues, proof, and variance.
209. — Presumptions and burden of proof.
210. — Admissibility of evidence.
- (1). In general.
- (2). Condition of road and cause of injury in general.
- (3). Condition of road at other times and places.
- (4). Similar accidents or absence thereof.
211. — Sufficiency of evidence.
212. — Damages.
213. — Questions for jury.
- (1). In general.
- (2). Condition of road and negligence of defendant.
- (3). Proximate cause of injury.
- (4). Contributory negligence.
214. — Instructions.
215. — Verdict and findings.
216. — Appeal and error.

201. HOLIDAYS**SUBJECTS INCLUDED**

- Days designated by law, other than Sunday, for suspension of ordinary business or judicial or other official proceedings
- Effect of violations of such laws on validity of acts, transactions, and proceedings affected,

and on the rights and remedies of persons engaged therein

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Restrictions on grounds other than character of the day, such as regulation of sale of intoxicants, see **ALCOHOLIC BEVERAGES**

Time, omission of holiday in computation, see **TIME**

1. Days appointed.
2. Half holidays.
3. Holidays falling on Sunday.
4. Private acts and transactions.
5. Judicial proceedings.
6. Official acts.

202. HOMESTEAD**SUBJECTS INCLUDED**

Exemption from forced sale, for payment of debts, of real property of debtors, as constituting the family residence

Constitutional and statutory provisions for such exemption

Nature, grounds and extent thereof in general
Who are entitled to benefit of such exemptions

Acquisition, selection, declaration, and establishment of homestead

Quantity or value of property exempt

As to what liabilities homesteads are exempt

Waiver or forfeiture of right of exemption

Abandonment, alienation, devise, or descent of homestead

Rights of devisees, heirs, or surviving members of family, and duration and termination of exemption

Protection and enforcement of the right

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Decedents' estates, quarantine, probate homestead or other occupation of real

202. HOMESTEAD

property, see EXECUTORS AND ADMINISTRATORS

Dower and curtesy rights, see DESCENT AND DISTRIBUTION IV

Exemption from forced sale of property of debtors in general, see EXEMPTIONS

Public lands, acquisition under homestead laws, see PUBLIC LANDS

Taxation of homestead, and tax exemption, see TAXATION

I. NATURE, ACQUISITION, AND EXTENT, ¶1-109.

(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT IN GENERAL, ¶1-15.

(B) PERSONS ENTITLED, ¶16-28.

(C) ACQUISITION AND ESTABLISHMENT, ¶29-57.5.

(D) PROPERTY CONSTITUTING HOMESTEAD, ¶58-89.

(E) LIABILITIES ENFORCEABLE AGAINST HOMESTEAD, ¶90-109.

II. TRANSFER OR INCUMBRANCE, ¶110-133.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS, ¶134-153.

IV. ABANDONMENT, WAIVER, OR FORFEITURE, ¶154-181.5.

V. PROTECTION AND ENFORCEMENT OF RIGHTS, ¶182-218.

I. NATURE, ACQUISITION, AND EXTENT.

(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT IN GENERAL.

1. Nature of estate or right.
2. What law governs.
3. Constitutional and statutory provisions.
4. Validity of statutes.
5. Construction of homestead laws in general.
6. Retroactive operation.
- 6.1. — In general.
7. — Liabilities and liens existing before homestead law.
8. — Liabilities existing before acquisition or establishment of homestead.
9. Effect of change or repeal of homestead exemption.
- 9.1. — In general.
10. — Rights of debtors.

I. NATURE, ACQUISITION, AND EXTENT.(Cont'd)

11. — Rights of creditors.
12. Nature and extent of right created.
13. Existence of more than one homestead.
14. Effect of ownership of other property.
15. Duration and termination.

(B) PERSONS ENTITLED.

16. Debtors or defendants.
17. Family relation in general.
18. Head of family and members thereof.
19. Householders.
20. Housekeepers.
21. Married women.
22. Children.
23. Unmarried persons.
24. Citizenship.
25. Residence.
- 25.1. — In general.
26. — Domicile in general.
27. — Residing with family.
28. — Absence or removal.

(C) ACQUISITION AND ESTABLISHMENT.

29. Acquisition and selection of property in general.
30. Constitutional and statutory provisions.
31. Intent in acquisition and occupancy.
32. Necessity of occupancy.
33. Character and mode of occupancy.
34. Purpose of occupancy and use of property.
35. — In general.
36. — Business homestead.
37. Extent of occupancy.
38. Selection and dedication in general.
39. Designation in conveyance.
40. Entry on record of title.
41. Declaration or certificate.
- 41.1. — In general.
42. — Necessity.
43. — Form and contents.
44. — Execution.
45. — Acknowledgment.
46. — Recording.
47. — Construction and operation.
48. Proceedings for allotment.
- 48.1. — In general.

202. HOMESTEAD**I. NATURE, ACQUISITION,
AND EXTENT.(Cont'd)**

- 49. — Necessity.
- 50. — Nature and form.
- 51. — Application and proceedings thereon in general.
- 52. — Appraisal, survey, and setting apart.
- 53. — Review.
- 54. — Operation and effect.
- 55. Time of acquisition of homestead exemption.
- 56. Change of homestead.
- 57. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 57.5. Questions for jury.

(D) PROPERTY CONSTITUTING HOMESTEAD.

- 58. Nature of property in general.
- 59. Manner of acquisition.
- 60. Character as homestead.
- 61. Amount or extent.
- 62. — In general.
- 63. — Homestead in city, town, or village.
- 64. — Effect of incorporation or extension of city, town, or village.
- 65. Value.
- 66. — In general.
- 67. — In city, town, or village.
- 68. — Effect of increase or depreciation.
- 69. Form and physical characteristics.
- 70. Separate tracts or lots.
- 71. Part of tract, lot, or building.
- 72. Appurtenances.
- 73. Improvements and additions.
- 74. Rents, profits, and products.
- 75. Proceeds of homestead.
- 76. — In general.
- 77. — Voluntary sale, exchange, or mortgage.
- 78. — Involuntary conversion.
- 79. — Proceeds of insurance.
- 80. — Property purchased with proceeds.
- 81. Ownership, estate, or interest in property in general.
- 82. Life estates.

**I. NATURE, ACQUISITION,
AND EXTENT.(Cont'd)**

- 83. Leaseholds.
- 84. Property of tenants in common and joint tenants.
- 85. Partnership property.
- 86. Community property.
- 87. Wife's separate property.
- 88. Equitable estates and interests.
- 89. Different homesteads in same property.

**(E) LIABILITIES ENFORCEABLE
AGAINST HOMESTEAD.**

- 90. Exceptions from exemptions in general.
- 91. Constitutional and statutory provisions.
- 92. Exception of pre-existing liabilities and liens.
- 93. — In general.
- 94. — Liabilities existing before acquisition of property.
- 95. — Liabilities existing before establishment of homestead.
- 96. Purchase money and lien or mortgage therefor.
- 97. Claims and liens for creation, improvement, or preservation of property.
- 98. Wages and materials.
- 99. Loans and advances.
- 99.5. Credit extended without notice of homestead character of property.
- 100. Liabilities for torts.
- 101. Alimony.
- 102. Judgments.
- 103. — In general.
- 104. — Enforcement after termination of homestead.
- 105. Debts to government.
- 106. Proceedings for enforcement of claims.
- 107. — In general.
- 108. — Exhaustion of other property before resort to homestead.
- 109. — Disposition of proceeds.

II. TRANSFER OR INCUMBRANCE.

- 110. Power to transfer or incumber in general.
- 111. Constitutional and statutory provisions.
- 112. Sale or exchange.
- 113. Conveyance or mortgage between husband and wife.

202. HOMESTEAD**II. TRANSFER OR INCUMBRANCE.(Cont'd)**

- 114. Lease.
- 115. Mortgage.
 - (1). In general.
 - (2). Form, requisites, and validity.
 - (3). Foreclosure.
- 116. Creation of lien.
- 117. Consent of husband or wife.
- 118. Joinder of husband and wife in deed or mortgage.
 - (1). In general.
 - (2). Necessity of joinder in general.
 - (3). Conveyances and agreements required to be jointly executed.
 - (4). Nature and sufficiency of joinder and effect of fraud or duress.
 - (5). Effect of failure to join.
 - (6). Curative acts.
- 119. Acknowledgment of deed or mortgage.
- 120. Order of court.
- 121. Sale on foreclosure.
- 122. Estoppel to assert invalidity.
- 123. Ratification.
- 124. Effect of termination of homestead.
- 125. Value or land in excess of homestead.
- 126. Conveyance subject to homestead.
- 127. Rights of purchasers and mortgagees.
- 128. — In general.
- 129. — Bona fide purchasers.
 - (1). In general.
 - (2). Purchasers of lien notes.
- 130. Avoidance.
- 131. — In general.
- 132. — Restoration of consideration.
- 133. — Cancellation of instrument.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.

- 134. Continuance or transmission of estate or right in general.
- 135. Constitutional and statutory provisions.
- 136. Devise or other testamentary disposition.
- 137. Existence of other interest in property.
- 138. Election between homestead and distributive share or year's support.
- 139. Nature of estate or right in general.
- 140. Rights of surviving husband.
- 141. Rights of surviving wife.
 - (1). In general.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.(Cont'd)

- (2). Effect of abandonment of husband.
- 142. Rights of children or heirs.
 - (1). In general.
 - (2). Course of descent of homestead in general.
- 143. Rights as between surviving spouse and children or heirs.
- 144. Duration and termination in general.
- 145. Abandonment, waiver, forfeiture, or release.
- 146. Transfer, lease, or incumbrance.
- 147. Subsequent marriage.
- 148. Majority of children.
- 149. Continuance of occupancy.
- 150. Proceedings for selection and allotment.
 - (1). In general.
 - (2). Operation and effect of allotment and vacating or setting aside same.
- 151. Property subject to appropriation as homestead.
- 152. Amount, extent, and value.
- 153. Enforcement of claims after termination of homestead.

IV. ABANDONMENT, WAIVER, OR FORFEITURE.

- 154. Loss or relinquishment of right in general.
- 155. Constitutional and statutory provisions.
- 156. Separation of family.
- 157. — In general.
- 158. — Divorce.
- 159. — Death.
- 160. Removal from homestead.
- 161. — In general.
- 162. — Intent to return.
 - (1). In general.
 - (2). Absence for business purposes.
 - (3). Removal for education of children.
- 163. — Acts constituting abandonment.
- 164. — Acquisition of other domicile or homestead.
- 165. Change in character or use of property.
- 166. Declaration or notice of abandonment.
- 167. Sale and conveyance.

202. HOMESTEAD**IV. ABANDONMENT, WAIVER,
OR FORFEITURE.(Cont'd)**

- 168. Lease.
- 169. Power to waive.
- 170. Contracts waiving right in general.
- 171. Mortgage or other incumbrance as waiver of right.
- 172. Consent to levy and sale.
- 173. Revocation of waiver.
- 174. Operation and effect of waiver or abandonment.
- 175. — In general.
- 176. — As to other creditors.
- 177. Estoppel to claim homestead.
 - (1). In general.
 - (2). Statements and representations operating as estoppel.
- 178. Forfeiture.
- 179. — In general.
- 180. — Fraudulent conveyance.
- 181. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 181.5. Questions for jury.

**V. PROTECTION AND ENFORCEMENT
OF RIGHTS.**

- 182. Establishment of right of exemption in general.
- 183. Statutory provisions.
- 184. Process or other proceedings as against which exemption may be allowed.
- 185. — In general.
- 186. — Levy of attachment or execution.
- 187. — Judicial sales in general.
- 188. — Foreclosure proceedings.
- 189. — Setting aside fraudulent conveyance.
- 190. Duties of officer making levy.
- 191. Necessity for claim.
- 192. Persons who may claim.
- 193. Time for making claim.
- 194. Form and requisites of claim.
- 195. Presentation and filing of claim.
- 196. Selection of homestead.
- 197. Contest and determination of claim.
- 198. Allotment.

**V. PROTECTION AND ENFORCEMENT
OF RIGHTS.(Cont'd)**

- 198.1. — In general.
- 199. — Proceedings in general.
- 200. — Appraisal, survey, and setting apart.
- 201. — Operation and effect.
- 202. Retaining property beyond exemption on payment of excess.
- 202.5. Taking property on payment of homestead value.
- 203. Sale of property subject to homestead.
- 204. Successive exemptions.
- 205. Failure to make claim.
- 206. Denial or infringement of rights.
- 207. Motions and other summary remedies.
- 208. Actions and defenses.
- 208.1. — In general.
- 209. — Nature and form of remedy.
- 209.5. — Grounds.
- 210. — Jurisdiction.
- 211. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 212. — Parties.
- 213. — Pleading.
- 214. — Evidence.
- 215. — Damages.
- 216. — Trial.
- 217. — Judgment and enforcement thereof.
- 218. — Review.

203. HOMICIDE**SUBJECTS INCLUDED**

- Killing a human being, aiding in, attempting or soliciting such killing, and assaults with intent to kill
- Nature and elements of murder, manslaughter, and of degrees thereof, and of attempts and assaults with intent to commit such offenses
- Nature and extent of criminal responsibility therefor, and grounds of defense, more particularly justification or excuse

203. HOMICIDE

Prosecution and punishment of such acts as public offenses

Threats to kill

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Automobiles, homicide by, see AUTOMOBILES

Bail, right to, see BAIL

Civil liability for wrongful death or assault, see ASSAULT AND BATTERY, DEATH

Confinement after acquittal or other disposition on ground of mental disorder or insanity, see MENTAL HEALTH

Conspiracy to kill, see CONSPIRACY

Death penalty, see SENTENCING AND PUNISHMENT

Due process, equal protection, and other constitutional rights and privileges of accused, see also CONSTITUTIONAL LAW

Factors considered in determining punishment, see also SENTENCING AND PUNISHMENT

Indictments or other formal accusations, see also INDICTMENTS AND CHARGING INSTRUMENTS

Jury trial, right to and waiver of, and qualifications and selection of jurors, see JURY

Killing one's self, see SUICIDE

New trial, application to trial courts for, see CRIMINAL LAW XXI

Pardon and commutation of sentence, see PARDON AND PAROLE I

Parole, eligibility for, see PARDON AND PAROLE II

Post-conviction relief and vacation of judgment, see CRIMINAL LAW XXX

Probation, eligibility for, see SENTENCING AND PUNISHMENT IX

Review on appeal, writ of error, or certiorari, see CRIMINAL LAW XXIV

Sentencing proceedings, see SENTENCING AND PUNISHMENT

Writ of habeas corpus, see HABEAS CORPUS

I. IN GENERAL, ¶500–519.

II. MURDER, ¶520–574.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT, ¶575–653.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT—Cont'd

(A) IN GENERAL, ¶575–579.

(B) MURDER, ¶580–619.

(C) MANSLAUGHTER, ¶620–653.

IV. MANSLAUGHTER, ¶654–724.

V. ASSAULT WITH INTENT TO KILL, ¶725–749.

VI. EXCUSABLE OR JUSTIFIABLE HOMICIDE, ¶750–814.

(A) IN GENERAL, ¶750–765.

(B) SELF-DEFENSE, ¶766–814.

VII. CAPACITY TO COMMIT CRIME, ¶815–829.

VIII. INDICTMENT AND INFORMATION, ¶830–899.

IX. EVIDENCE, ¶900–1299.

(A) IN GENERAL, ¶900–904.

(B) PRESUMPTIONS AND INFERENCES, ¶905–927.

(C) BURDEN OF PROOF, ¶928–949.

(D) ADMISSIBILITY IN GENERAL, ¶950–1074.

(E) DYING DECLARATIONS, ¶1075–1109.

(F) PROCEEDINGS AT INQUEST, ¶1110–1124.

(G) WEIGHT AND SUFFICIENCY, ¶1125–1299.

X. TRIAL IN GENERAL, ¶1300–1318.

XI. QUESTIONS OF LAW OR FACT, ¶1319–1359.

XII. INSTRUCTIONS, ¶1360–1549.

(A) IN GENERAL, ¶1360–1369.

(B) NECESSITY AND SUFFICIENCY, ¶1370–1449.

(C) NECESSITY OF INSTRUCTION ON OTHER GRADE, DEGREE, OR CLASSIFICATION OF OFFENSE, ¶1450–1464.

(D) PARTIES, ¶1465–1469.

(E) EXCUSES AND JUSTIFICATIONS, ¶1470–1499.

(F) CAPACITY TO COMMIT CRIME, ¶1500–1549.

XIII. VERDICT, ¶1550–1559.

XIV. SENTENCE AND PUNISHMENT, ¶1560–1574.

I. IN GENERAL.

500. In general.

501. Person subject of homicide.

502. — In general.

503. — Unborn children.

504. Nature of act or omission causing death.

203. HOMICIDE**I. IN GENERAL.**(Cont'd)

- 505. Nature of means or instrument employed.
- 506. Nature of injury to person killed.
- 507. Cause of death.
- 508. Time of death.
- 509. — In general.
- 510. — Year and a day rule.
- 511. Corpus delicti.

II. MURDER.

Murder in commission of other offense or unlawful act (felony murder), see III.

- 520. In general.
- 521. Constitutional and statutory provisions.
- 522. — In general.
- 523. — Validity.
- 524. — Retroactive operation.
- 525. What constitutes murder in general.
- 526. Intent or mens rea.
Affecting degree of murder, see 541, 546, 548. Transferred intent, see 555.
- 527. — In general.
- 528. — Intent to injure or cause bodily harm.
- 529. Malice.
Affecting degree of murder, see 541, 546, 548. Absence of, as element of manslaughter, see 665.
- 530. — In general.
- 531. — Express.
- 532. — Implied.
Circumstances giving rise to inference of malice, see 909.
- 533. Recklessness, wantonness, or extreme indifference.
- 534. Deliberation and premeditation.
Affecting degree of murder, see 542, 547, 548.
- 535. — In general.
- 536. — Time required.
- 537. Homicide in duel.
Includes mutual or voluntary combat or affray. Affecting degree, see 539, 544, 548.
- 538. Degrees in general.
- 539. First degree, capital, or aggravated murder.
Public employees and officials as victims, see 550. Murder for hire or contract killing, see 563.
- 540. — In general.
- 541. — Intent or mens rea; malice.
Transferred intent, see 555.
- 542. — Deliberation and premeditation.
- 543. — Sufficiency of deliberation; time required.

II. MURDER.(Cont'd)

- 544. Second degree murder.
- 545. — In general.
- 546. — Intent or mens rea; malice.
Transferred intent, see 555.
- 547. — Deliberation and premeditation.
- 548. Third and lesser degrees of murder.
- 549. Degrees of murder compared and contrasted.
- 550. Public employees, officials, and persons assisting them.
Includes degrees as affected by official status of victim. Resistance of unlawful arrest as excuse or justification, see 805. Exercise of official authority as excuse or justification, see VI(A).
- 551. — In general.
- 552. — Law enforcement officers.
- 553. — Correctional employees and officers.
- 554. — Exercise of authority or duty.
- 555. Killing one person with intent to kill or injure another; transferred intent.
- 556. Attempt.
- 557. — In general.
- 558. — Intent or mens rea.
- 559. — Substantial step.
- 560. — Nature and extent of injury.
- 561. — Degrees of offenses.
 - (1). In general.
 - (2). First degree, capital, or aggravated murder.
 - (3). Second degree murder.
 - (4). Third and lesser degrees of murder.
- 562. Solicitation to kill.
- 563. Murder for hire; contract killing.
- 564. Motive.
- 565. Nature of act or omission causing death.
- 566. Cause of death.
- 567. Means, instrument, or device employed.
- 568. Parties to offense.
Liabilities of multiple perpetrators for killing in commission of other offense, see III.
- 569. — In general.
- 570. — Presence in general.
- 571. — Aiding, abetting, or other participation in offense.
- 572. — Principals.
 - (1). In general.
 - (2). Principals in first degree.
 - (3). Principals in second degree.

203. HOMICIDE**II. MURDER.(Cont'd)**

573. — Accessories.
 (1). In general.
 (2). Accessories before the fact.
 (3). Accessories after the fact.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.**(A) IN GENERAL.**

575. In general.
 576. Constitutional and statutory provisions.

(B) MURDER.

Includes felony murder.

580. In general.
 581. Intent or mens rea.
 582. Predicate offenses or conduct.
 Particular offenses or conduct, see ¶593.
 583. — In general.
 584. — Unlawful act in general.
 585. — Felonies in general.
 586. — Punishment authorized for offense in general.
 587. — Dangerousness of offense in general.
 588. — Causal relationship between offense and death.
 589. — Temporal proximity of offense and death.
 590. — Conduct inseparable from or included within homicide.
 591. Victim's role, status, or participation in general.
 Death of co-perpetrator, see ¶617.
 592. Death caused by third person in general.
 593. Particular offenses and conduct.
 Issues involving multiple perpetrators, see ¶611.
 594. — In general.
 595. — Abortion.
 596. — Arson.
 597. — Assault or battery.
 598. — Burglary or trespass.
 599. — Conspiracy and racketeering.
 600. — Controlled substances.
 601. — Escape.
 602. — Homicide.
 603. — Injuring or endangering child.
 604. — Kidnapping.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.(Cont'd)

605. — Larceny and other property offenses.
 606. — Obstructing justice.
 607. — Robbery.
 608. — Sex offenses.
 609. — Weapons offenses.
 610. Attempt.
 611. Multiple perpetrators.
 612. — In general.
 613. — Conspiring and planning.
 614. — Aiding, abetting, or other participation in offense.
 615. — Presence.
 616. — Accessories before the fact.
 617. — Death of co-perpetrator.

(C) MANSLAUGHTER.

620. In general.
 621. Intent or mens rea.
 622. Predicate offenses or conduct.
 Particular offenses or conduct, see ¶634.
 623. — In general.
 624. — Unlawful act in general.
 625. — Felonies in general.
 626. — Misdemeanors in general.
 627. — Punishment authorized for offense in general.
 628. — Dangerousness of act in general.
 629. — Causal relationship between act and death.
 630. — Temporal proximity of act and death.
 631. — Conduct inseparable from or included within homicide.
 632. Victim's role, status, or participation in general.
 Death of co-perpetrator, see ¶652.
 633. Death caused by third person in general.
 634. Particular offenses and conduct.
 Issues involving multiple perpetrators, see ¶652.
 634.5. — In general.
 635. — Abortion.
 636. — Arson.
 637. — Assault or battery.
 638. — Burglary or trespass.
 639. — Conspiracy and racketeering.
 640. — Controlled substances.

203. HOMICIDE**III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.(Cont'd)**

- 641. — Escape.
- 642. — Homicide.
- 643. — Injuring or endangering child.
- 644. — Kidnapping.
- 645. — Larceny and other property offenses.
- 646. — Mutual combat.
- 647. — Obstructing justice.
- 648. — Robbery.
- 649. — Sex offenses.
- 650. — Weapons offenses.
- 651. Attempt.
- 652. Multiple perpetrators.

IV. MANSLAUGHTER.

Mental incapacity reducing murder to manslaughter, see ¶825. Manslaughter in commission of other offense or unlawful act, see III(C).

- 654. In general.
- 655. Constitutional and statutory provisions.
- 656. What constitutes manslaughter in general.
- 657. Murder and manslaughter compared and contrasted.
- 658. What constitutes voluntary manslaughter, in general.
- 659. What constitutes involuntary manslaughter, in general.
- 660. Voluntary and involuntary manslaughter compared and contrasted.
- 661. Degrees.
 - (1). In general.
 - (2). First degree or aggravated manslaughter.
 - (3). Second degree manslaughter.
 - (4). Third and lesser degrees of manslaughter.
- 662. Intent or mens rea in general.
Transferred intent, see ¶702.
- 663. Intent to kill.
Transferred intent, see ¶702.
- 664. Intent to injure.
Transferred intent, see ¶702.
- 665. Malice.
- 666. Sudden passion or heat of passion.
Extreme emotional disturbance or temporary insanity affecting grade or degree, see ¶828.
- 667. — In general.

IV. MANSLAUGHTER.(Cont'd)

- 668. — Passion as element or as factor affecting degree or grade of offense.
- 669. — Time for cooling.
- 670. Provocation.
- 671. — In general.
- 672. — Nature and adequacy in general.
- 673. — Sufficiency as cause of passion.
- 674. Mere language, or words alone.
- 675. Threatening language or conduct.
- 676. Insulting or defaming defendant.
- 677. Insulting or defaming third person.
- 678. Resisting unlawful act in general.
- 679. Assaulting or injuring defendant.
- 680. Assaulting or threatening third person.
- 681. Infidelity or unfaithfulness.
- 682. Trespass or injury to property.
- 683. Provocation created or incited by defendant.
- 684. Relation of provocation to killing.
- 685. Resistance of arrest or imprisonment.
- 686. Imperfect self-defense.
Includes claim of self-defense as reducing murder to manslaughter. Self-defense as justification, see VI(B).
- 687. — In general.
- 688. — Initial aggression by defendant.
- 689. — Withdrawal.
- 690. — Mutual combat.
- 691. — Nature of danger.
- 692. — Imminence or immediacy of danger.
- 693. — Apprehension of danger.
- 694. — Reasonableness of apprehension.
- 695. — Necessity of defendant's conduct.
- 696. — Amount of force.
- 697. — Duty to retreat or avoid danger.
- 698. — Renewal of altercation.
- 699. Nature of act causing death.
- 700. Means, instrument, or device employed.
- 701. Cause of death.
- 702. Killing one person with intent to kill or injure another; transferred intent.
- 703. Exercise of authority.
As excuse or justification, see VI(A).
- 704. — In general.
- 705. — Discipline or correction.
- 706. — Making arrest or preventing escape.
- 707. — Suppressing disturbance and preservation of peace.

203. HOMICIDE**IV. MANSLAUGHTER.(Cont'd)**

- 708. Negligence.
- 709. Recklessness, wantonness, or extreme indifference.
- 710. Omission or failure to act.
- 711. Attempt.
- 712. — In general.
- 713. — Existence of crime.
- 714. — Intent or mens rea.
- 715. — Degrees.
- 716. Parties to offense.
- 717. — In general.
- 718. — Aiding, abetting, or other participation in offense.
- 719. — Principals.
- 720. — Accessories.

V. ASSAULT WITH INTENT TO KILL.

- 725. In general.
- 726. Constitutional and statutory provisions.
- 727. Intent or mens rea.
- 728. Malice.
- 729. Deliberation and premeditation.
- 730. Nature and character of act.
- 731. Assault on one person with intent to kill another; transferred intent.
- 732. Means, instrument, or device employed.
- 733. Ability to execute intent.
- 734. Actual injury and extent thereof.
- 735. Grade or degree of crime, had death ensued.
- 736. Threats to take life.
- 737. Attempt.
- 738. Parties to offense.
- 739. Excuses or justification in general.
See also VI(A).
- 740. Self-defense.
See also VI(B).
- 741. — In general.
- 742. — Necessity of act in general.
- 743. — Aggression and provocation of attack.
- 744. — Apprehension of danger.
- 745. Defense of another person.
See also 757.
- 746. Defense of property.
See also 758.
- 747. Defense of dwelling or habitation.
See also 759.

VI. EXCUSABLE OR JUSTIFIABLE HOMICIDE.**(A) IN GENERAL.**

Defenses in general, see CRIMINAL LAW II.

- 750. In general.
- 751. Constitutional and statutory provisions.
- 752. Preservation of peace and order in general.
- 753. Prevention of commission of crime.
- 754. Making arrest.
- 755. Prevention of escape.
- 756. Obedience to official or person in apparent authority.
- 757. Defense of another person.
- 758. Defense of property.
- 759. Defense of dwelling or habitation.
- 760. — In general.
- 761. — Duty to retreat or avoid danger.
- 762. Accident or misfortune.
- 763. Compulsion, necessity, or duress.
See also CRIMINAL LAW 38.
- 764. Matters of philosophy and ideology.
- 765. Euthanasia and mercy-killing.

(B) SELF-DEFENSE.

Assault with intent to kill, see 740. Imperfect self-defense reducing murder to manslaughter, see 686.

- 766. In general.
- 767. Conduct or circumstances provoking use of force.
- 768. — In general.
- 769. — Necessity of use of force.
- 770. — Assault or attack on accused.
- 771. — Threats.
- 772. — Weapons.
- 773. Aggression or provocation by accused.
- 774. — In general.
- 775. — Intent of accused.
- 776. — Conduct constituting aggression or provocation in general.
- 777. — Insulting, abusive, or opprobrious language.
- 778. — Threats.
- 779. — Assault, attack, or other hostile behavior.
- 780. — Weapons.
- 781. — Lawful conduct.
- 782. — Relation between aggression or provocation and response.
- 783. Withdrawal after aggression.
Duty to retreat, see 798.

203. HOMICIDE**VI. EXCUSABLE OR JUSTIFIABLE
HOMICIDE.(Cont'd)**

- 784. Mutual or voluntary conduct.
- 785. Danger.
- 786. — In general.
- 787. — Real or apparent danger.
- 788. — Circumstances and events constituting danger.
- 789. — Imminence or immediacy of danger.
- 790. — Threats.
- 791. — Weapons.
- 792. Apprehension of danger.
- 793. — In general.
- 794. — Actual belief in or apprehension of danger.
- 795. — Reasonableness of belief or apprehension.
- 796. — Threats.
- 797. — Weapons.
- 798. Duty to retreat or avoid danger.
- 799. — In general.
- 800. — Conduct or circumstances creating danger.
- 801. — Place or situation of confrontation.
- 802. — Confrontation on accused's own premises.
- 803. — Confrontation when accused is exercising legal right.
- 804. — Weapons.
- 805. Resistance of arrest.
- 806. Manner or means of self-defense.
- 807. — In general.
- 808. — Excessive force.
- 809. Pursuit of adversary and renewal of conflict.

VII. CAPACITY TO COMMIT CRIME.

See also CRIMINAL LAW VI.

- 815. In general.
- 816. Diminished capacity in general.
Affecting grade or degree of offense, see ¶826.
- 817. Insanity.
- 818. Extreme emotional disturbance or distress; temporary insanity.
- 819. Persons with intellectual disabilities.
- 820. Intoxication.
- 821. — In general.
- 822. — Drugs and controlled substances.
- 823. — Involuntary intoxication.

VII. CAPACITY TO COMMIT CRIME.(Cont'd)

- 824. — Insanity resulting from abuse of alcohol or drugs.
- 825. Mental incapacity affecting grade or degree of offense.
- 826. — In general.
- 827. — Insanity.
- 828. — Extreme emotional disturbance or distress; temporary insanity.
- 829. — Intoxication.

VIII. INDICTMENT AND INFORMATION.

See also INDICTMENTS AND CHARGING INSTRUMENTS.

- 830. In general.
- 831. Specification of grade, degree, or classification of offense.
- 832. Murder in general.
- 833. Manslaughter in general.
- 834. Intent or mens rea.
Transferred intent, see ¶853.
- 835. Malice.
- 836. Recklessness, wantonness, or extreme indifference.
- 837. Deliberation and premeditation.
- 838. Motive.
- 839. Act or omission of accused.
- 840. Injury or condition causing death.
- 841. Means, instrument, or device, and use thereof.
- 842. — In general.
- 843. — Necessity of allegation in general.
- 844. — Sufficiency of allegation.
- 845. — Weapons.
- 846. — Poisons.
- 847. — Means or device unknown.
- 848. Occurrence, time, and place of death.
- 849. Passion and provocation.
- 850. Killing in commission of, or with intent to commit, other unlawful act.
- 851. Solicitation to kill.
- 852. Attempt.
- 853. Transferred intent.
- 854. Parties to offense.
Designation and description of accused, see INDICTMENTS AND CHARGING INSTRUMENTS ¶582.
Designation of victim, see INDICTMENTS AND CHARGING INSTRUMENTS ¶594.
- 855. Assault with intent to kill.
- 856. — In general.
- 857. — Intent.

203. HOMICIDE**VIII. INDICTMENT AND INFORMATION.**(Cont'd)

- 858. — Malice.
- 859. — Deliberation and premeditation.
- 860. — Nature and character of act.
- 861. — Assault on one person with intent to kill another.
- 862. — Means, instrument, or device employed in general.
- 863. — Description or characterization of instrument.
- 864. — Injury inflicted.
- 865. — Grade or degree of crime, had death ensued.
- 866. — Attempts.
- 867. — Parties to offense.
- 868. Threats to take life.
- 869. Issues in general.
- 870. Matters to be proved under accusation.
- 871. Variance between accusation and proof.
- 872. — In general.
- 873. — Grade, degree, or classification of offense.
- 874. — Multiple perpetrators.
- 875. — Multiple victims.
- 876. — Act or omission of accused.
- 877. — Means, instrument, or device, and use thereof.
- 878. — Injury inflicted.
- 879. — Cause of death.
- 880. — Transferred intent.
- 881. — Parties to offense.

IX. EVIDENCE.

Evidence in criminal trials in general, see CRIMINAL LAW. Witnesses, including their competency, examination, and credibility, see WITNESSES.

(A) IN GENERAL.

- 900. In general.
- 901. Constitutional and statutory provisions.

(B) PRESUMPTIONS AND INFERENCES.

See also CRIMINAL LAW XVII(B).

- 905. In general.
- 906. Corpus delicti.
- 907. Elements of offense in general.
- 908. Intent or mens rea.
- 909. Malice.
- 910. Deliberation and premeditation.
- 911. Motive.

IX. EVIDENCE.(Cont'd)

- 912. Passion or provocation.
- 913. Personal and familial relations.
- 914. Cause of death.
- 915. Grade, degree, or classification of offense.
- 916. Commission of or participation in act by accused; identity.
- 917. Matters of defense in general.
- 918. Excuse or justification.
- 919. — In general.
- 920. — Self-defense.
- 921. — Defense of another person.
- 922. — Accident or misfortune.
- 923. — Compulsion, necessity, or duress.
- 924. Capacity to commit crime in general.
- 925. Insanity.
- 926. Intoxication.

(C) BURDEN OF PROOF.

See also CRIMINAL LAW XVII(C).

- 928. In general.
- 929. Corpus delicti.
- 930. Elements of offense in general.
- 931. Intent or mens rea.
- 932. Malice.
- 933. Deliberation and premeditation.
- 934. Motive.
- 935. Cause of death.
- 936. Grade, degree, or classification of offense.
- 937. Commission of or participation in act by accused; identity.
- 938. Passion or provocation.
- 939. Matters of defense in general.
- 940. Excuse or justification.
- 941. — In general.
- 942. — Self-defense.
- 943. — Defense of another person.
- 944. — Accident or misfortune.
- 945. — Compulsion, necessity or duress.
- 946. Capacity to commit crime in general.
- 947. Insanity.
- 948. Intoxication.

(D) ADMISSIBILITY IN GENERAL.

Admissions, declarations, and confessions, see also CRIMINAL LAW. Opinion evidence, including expert opinion, see CRIMINAL LAW. Other offenses, see also CRIMINAL LAW. Reception of evidence, procedure concerning, see CRIMINAL LAW. Res gestae and ex-

203. HOMICIDE

cited utterances, see CRIMINAL LAW XVII(E).
Wrongfully obtained evidence, see CRIMINAL LAW.

- 950. In general.
- 951. Corpus delicti.
- 952. Ability and opportunity.
- 953. Circumstances preceding act.
To show intent, malice, or premeditation, see ¶985.
- 954. — In general.
- 955. — Matters related to facts in evidence.
- 956. — Previous difficulties and surrounding circumstances.
- 957. — Circumstances of conspiracy or concerted action.
- 958. — Other misconduct part of course of conduct.
- 959. — Declarations of accused.
- 960. — Declarations of victim.
- 961. — Declarations of third person.
- 962. — Remoteness.
- 963. Preparations or planning.
To show intent, malice, or premeditation, see ¶991.
- 964. Prior attempts.
- 965. Threats in general.
- 966. Threats by accused.
To show intent, malice, or premeditation, see ¶989.
Subsequent to offense, see ¶1018.
- 967. — In general.
- 968. — Indefinite, impersonal, and conditional threats.
- 969. — Threats against a class.
- 970. — Threats against third person.
- 971. — Remoteness.
- 972. Threats by victim.
On issue of self-defense, see ¶1053.
- 973. Threats by third person.
Incriminating others, see ¶1038.
- 974. Nature of act and attendant circumstances in general.
To show intent, malice, or premeditation, see ¶992.
- 975. — In general.
- 976. — Physical conditions.
- 977. — Other misconduct.
- 978. — Declarations of accused.
- 979. — Declarations of victim.
- 980. — Declarations of third person.
- 981. Commission of or attempt to commit other offense or unlawful act.
- 982. Means, instrument, or device employed.
Possession by accused subsequent to crime, see ¶1020.
- 983. Identity and presence of accused.

IX. EVIDENCE.(Cont'd)

- 984. Identity and status of victim.
- 985. Intent, malice, deliberation, and premeditation.
Motive, see ¶1000.
- 986. — In general.
- 987. — Declarations and statements.
- 988. — Previous quarrels and ill feeling.
 - (1). In general.
 - (2). Circumstances of previous difficulty.
 - (3). Difficulties involving third person.
 - (4). Difficulties involving spouses, cohabitants, or paramours.
 - (5). Remoteness.
- 989. — Previous threats and expressions of ill will by accused.
 - (1). In general.
 - (2). Indefinite, impersonal, and conditional threats.
 - (3). Threats against third person.
 - (4). Remoteness.
- 990. — Previous hostile acts or conduct of accused.
- 991. — Preparations.
- 992. — Nature and circumstances of act.
- 993. Commission of or participation in act by accused in general.
- 994. Character and habits.
- 995. — In general.
- 996. — Accused.
- 997. — Victim.
On issue of self-defense, see ¶1051.
- 998. Physical condition of parties.
- 999. Personal relations of parties.
- 1000. Motive.
- 1001. — In general.
- 1002. — Disagreement and animosity.
- 1003. — Avoiding arrest or prosecution; escape.
- 1004. — Prosecutor or witness in other proceeding as victim.
- 1005. — Discord between spouses or cohabitants.
- 1006. — Infidelity, unfaithfulness, or jealousy.
- 1007. — Relationship between defendant and victim's spouse.
- 1008. — Pecuniary motive.
- 1009. — Burglary or robbery.

203. HOMICIDE**IX. EVIDENCE.**(Cont'd)

- 1010. — Inheritance.
- 1011. — Collection of insurance.
- 1012. Subsequent incriminating or exculpatory circumstances.
See also CRIMINAL LAW ¶351.
- 1013. — In general.
- 1014. — Physical conditions.
- 1015. — Mental state or demeanor of accused.
- 1016. — Statements by accused.
- 1017. — Statements by third person.
- 1018. — Subsequent threats or attempts by accused.
- 1019. — Possession of money or property similar to that of victim.
- 1020. — Possession and condition of weapons and other physical objects.
- 1021. — Flight or refusal to flee.
- 1022. — Resisting or avoiding arrest.
- 1023. — Concealment of identity.
- 1024. — Suicide attempt.
- 1025. — Silence.
- 1026. — Subornation of witnesses or jurors.
- 1027. — Fabrication of evidence.
- 1028. — Escape, escape attempts, and escape opportunity declined.
- 1029. — Suppression or destruction of evidence.
- 1030. — Misrepresentations to avoid suspicion or cast suspicion on others.
- 1031. Cause of death.
- 1031.5. Suicide.
Includes evidence to show that victim committed suicide. Suicide attempt by accused to show consciousness of guilt, see ¶1024.
- 1032. Extent of injuries from assault with intent to kill.
- 1033. Incriminating others.
See also CRIMINAL LAW ¶359.
- 1034. — In general.
- 1035. — Presence at scene.
- 1036. — Declarations of third person.
- 1037. — Motive for others to commit crime.
- 1038. — Threats by third person.
- 1039. Capacity to commit crime.
Expert testimony, see CRIMINAL LAW ¶474–474.2.
- 1040. — In general.
- 1041. — Insanity.

IX. EVIDENCE.(Cont'd)

- 1042. — Persons with intellectual disabilities.
- 1043. — Intoxication.
- 1044. Passion or provocation.
- 1045. Lawfulness of victim's conduct, and response by accused.
- 1046. Excuse or justification in general.
- 1047. Exercise of authority or duty.
- 1048. Prevention of commission of offense in general.
- 1049. Self-defense.
- 1050. — In general.
- 1051. — Character and habits of victim.
 - (1). In general.
 - (2). Knowledge of defendant as to victim's character.
 - (3). Necessity of claim or showing of self-defense.
 - (4). Sufficiency of showing of self-defense.
 - (5). Manner of proving character or habits.
 - (6). Habit of carrying weapons.
 - (7). Admissibility on behalf of prosecution.
- 1052. — Previous quarrels and ill feeling.
- 1053. — Previous threats by victim.
 - (1). In general.
 - (2). Admissibility where defendant was the aggressor.
 - (3). Necessity of claim or showing of self-defense.
 - (4). Sufficiency of showing of self-defense.
 - (5). Remoteness of threats.
 - (6). Impersonal, conditional and indirect threats.
 - (7). Uncommunicated threats.
 - (8). Communicated threats.
 - (9). Evidence as to communication.
 - (10). Rebuttal of evidence of threats.
- 1054. — Previous hostile acts or conduct of victim.
- 1055. — Aggression or provocation by accused.
- 1056. — Possession and use of weapons by victim.
- 1057. — Nature and circumstances of act.

203. HOMICIDE**IX. EVIDENCE.**(Cont'd)

- 1058. — Imminence and apprehension of danger to accused.
- 1059. — Reasonableness of apprehension.
- 1060. — Manner or means of self-defense in general.
- 1061. — Excessive force.
- 1062. Defense of another person.
- 1063. Defense of property.
- 1064. Defense of dwelling or habitation.
- 1065. Accident or misfortune.
- 1066. Compulsion, necessity, or duress.

(E) DYING DECLARATIONS.

Declarations by persons since deceased as hearsay, see CRIMINAL LAW ¶419. Res gestae or excited utterances, see CRIMINAL LAW XVII(E).

- 1075. In general.
- 1076. Grounds of admissibility in general.
- 1077. Condition of declarant.
- 1078. — In general.
- 1079. — Danger and imminence of death.
- 1080. — Sense of impending death.
 - (1). In general.
 - (2). Necessity that declaration be made under sense of impending death.
 - (3). Necessity of statement by deceased as to belief in impending death.
 - (4). Sufficiency of showing in general.
 - (5). Expression of despair.
 - (6). Hopes and expectation of recovery by deceased.
 - (7). Hopes and assurances of others.
 - (8). Belief as to imminence of death.
- 1081. — Time intervening before death.
- 1082. Circumstances surrounding declaration.
- 1083. Making and form of declaration.
- 1084. — In general.
- 1085. — Declarations under oath.
- 1086. — Written declarations.
- 1087. Ratification of previous declaration.
- 1088. Statements favorable to accused.
- 1089. Competency of declarant as witness.
- 1090. Subject-matter and relevancy.
 - (1). In general.
 - (2). Necessity that declaration be confined to circumstances of killing.

IX. EVIDENCE.(Cont'd)

- (3). Relevancy to homicidal act.
- 1091. Competency of declaration as evidence.
 - (1). In general.
 - (2). Completeness.
 - (3). Definiteness and certainty.
 - (4). Conclusions and opinions.
- 1092. Preliminary evidence.

Whether evidence shows sense of impending death, see ¶1080.
- 1093. Method of proof.
- 1094. Determination of admissibility.
- 1095. Credibility and impeachment.
- 1096. Contradiction and corroboration.
- 1097. Effect.

(F) PROCEEDINGS AT INQUEST.

Includes admissibility and effect of proceedings at inquest in homicide trial. Necessity and conduct of inquest as to cause of death, see CORONERS ¶9.

- 1110. In general.
- 1111. Admissibility in general.
- 1112. Testimony of witnesses.
- 1113. Testimony and statements of accused.
- 1114. Verdict and inquisition.
- 1115. Method of proof.
- 1116. Effect.

(G) WEIGHT AND SUFFICIENCY.

- 1125. In general.
- 1126. Corpus delicti.
- 1127. — In general.
- 1128. — Sufficiency of circumstantial evidence.
- 1129. — Necessity that body be found.
- 1130. — Degree of proof.
- 1131. — Infanticide cases.
- 1132. — Place.
- 1133. Homicide in general.
- 1134. — In general.
- 1135. — Intent or mens rea.
- 1136. — Malice.
- 1137. — Deliberation and premeditation.
- 1138. First degree, capital, or aggravated murder.
- 1139. — In general.
- 1140. — Sufficiency of circumstantial evidence in general.
- 1141. — Intent or mens rea.
- 1142. — Malice.

203. HOMICIDE**IX. EVIDENCE.**(Cont'd)

- 1143. — Deliberation and premeditation.
- 1144. — Atrocity or cruelty.
- 1145. — Nature of instrument or device used.
- 1146. Second degree murder.
- 1147. Third and lesser degrees of murder.
- 1148. Manslaughter in general.
- 1149. Voluntary manslaughter.
- 1150. Involuntary manslaughter.
- 1151. Degrees of manslaughter.
- 1152. Passion or provocation.
- 1153. Assault with intent to kill.
- 1154. — In general.
- 1155. — Intent; mens rea.
- 1156. — Showing as to grade of offense had death ensued.
- 1157. — Circumstantial evidence in general.
- 1158. — Miscellaneous particular circumstances.
- 1159. — False and improbable statements accompanied by other evidence.
- 1160. — Threats accompanied by other evidence.
- 1161. — Deadly character of assault.
- 1162. Homicide in commission of or with intent to commit other unlawful act.
- 1163. — In general.
- 1164. — Intent or mens rea.
- 1165. — Predicate offenses or conduct.
- 1166. — Relation between predicate offense or conduct and homicide.
- 1167. — Multiple perpetrators.
- 1168. Attempt.
- 1169. Solicitation to kill.
- 1170. Threats to kill.
- 1171. Transferred intent.
- 1172. Identity of victim.
- 1173. Motive.
- 1174. Cause of death.
- 1175. Time of death.
- 1176. Commission of or participation in act by accused; identity.
- 1177. — In general.
- 1178. — Testimony of co-perpetrator.
- 1179. — Altercation or attack by several.
- 1180. — Participation in crime committed by another.

IX. EVIDENCE.(Cont'd)

- 1181. — Eyewitness identification.
- 1182. — Identification by victim.
- 1183. — Circumstantial evidence in general.
- 1184. — Miscellaneous particular circumstances.
- 1184.5. — Presence at scene of crime.
- 1185. — Motive.
- 1186. — Confessions and declarations.
- 1187. — False and improbable statements.
- 1188. — Threats and expressions of ill will.
- 1189. Excuse or justification in general.
- 1190. Exercise of authority or duty.
- 1191. Prevention of commission of offense in general.
- 1192. Self-defense.
- 1193. — In general.
- 1194. — Degree of proof in general.
- 1195. — Aggression or provocation by accused.
- 1196. — Mutual combat.
- 1197. — Nature and imminence of danger.
- 1198. — Apprehension of danger.
- 1199. — Duty to retreat or avoid danger.
- 1200. — Amount of force.
- 1201. — Defendant's statement alone and affected by other evidence.
- 1202. Defense of another.
- 1203. Defense of property.
- 1204. Defense of dwelling or habitation.
- 1205. Accident or misfortune.
- 1206. Compulsion, necessity, or duress.
- 1207. Parties to offense.
- 1208. Capacity to commit crime.
- 1209. — In general.
- 1210. — Insanity.
- 1211. — Extreme emotional disturbance or distress; temporary insanity.
- 1212. — Persons with intellectual disabilities.
- 1213. — Intoxication.

X. TRIAL IN GENERAL.

Course and conduct of proceedings at criminal trials, see CRIMINAL LAW XX.

- 1300. In general.
- 1301. Exhumation and examination of body of deceased.

203. HOMICIDE**XI. QUESTIONS OF LAW OR FACT.**

- 1319. In general.
- 1320. Elements of offense in general.
- 1321. Murder in general.
- 1322. Homicide in commission of or with intent to commit other unlawful act in general.
- 1323. Manslaughter in general.
- 1324. Assault with intent to kill in general.
- 1325. Intent or mens rea.
- 1326. Malice.
- 1327. Recklessness, wantonness, or extreme indifference.
- 1328. Deliberation and premeditation.
- 1329. Passion or provocation.
- 1330. Cause of death.
- 1331. Commission of or participation in offense by accused; identity.
- 1332. Parties to offenses.
- 1333. Grade, degree, or classification of offense.
- 1334. Solicitation to kill.
- 1335. Attempts.
- 1336. Excuse or justification in general.
- 1337. Preservation of peace in general.
- 1338. Prevention of commission of crime.
- 1339. Making arrest or preventing escape.
- 1340. Defense of another person.
- 1341. Defense of property.
- 1342. Defense of dwelling or habitation.
- 1343. Accident or misfortune.
- 1344. Compulsion, necessity, or duress.
- 1345. Self-defense in general.
- 1346. Threats or hostile conduct by victim.
- 1347. Aggression or provocation by accused.
- 1348. Danger and apprehension thereof.
- 1349. Manner or means of self-defense.
- 1350. Capacity to commit crime in general.
- 1351. Insanity.
- 1352. Intoxication.
- 1353. Extreme emotional disturbance or distress; temporary insanity.
- 1354. Persons with intellectual disabilities.

XII. INSTRUCTIONS.

Instructions to juries in general, see CRIMINAL LAW XX.

(A) IN GENERAL.

- 1360. In general.

XII. INSTRUCTIONS.(Cont'd)

- 1361. Constitutional and statutory provisions.
- 1362. Corpus delicti.

(B) NECESSITY AND SUFFICIENCY.

Necessity of instructions on lesser, other, or alternative offenses or degrees, see XII(C).

- 1370. In general.
- 1371. Murder in general; definitions.
- 1372. Manslaughter in general; definitions.
- 1373. Assault with intent to kill in general; definitions.
- 1374. Grade, degree or classification of offense.
- 1375. — In general.
- 1376. — Characterization or definition of degree in general.
- 1377. — First degree, capital, or aggravated murder.
- 1378. — Second degree murder.
- 1379. — Murder of third or lesser degree.
- 1380. — Manslaughter in general.
- 1381. — First degree manslaughter.
- 1382. — Second degree manslaughter.
- 1383. — Manslaughter of third or lesser degree.
- 1384. — Assault with intent to kill.
- 1385. Passion or provocation.
- 1386. Intent or mens rea.
- 1387. — In general.
- 1388. — Presumptions and inferences.
- 1389. — Transferred intent.
- 1390. Malice.
- 1391. — In general.
- 1392. — Presumptions and inferences.
- 1393. Recklessness, wantonness, or extreme indifference.
- 1394. Deliberation and premeditation.
- 1395. — In general.
- 1396. — Time.
- 1397. — Presumptions and inferences.
- 1398. Motive.
- 1399. Nature of act or omission and attendant circumstances.
- 1400. Cause of death.
- 1401. Means, instrument, or device, and use thereof.
- 1402. Mutual combat, sudden affray, or duel.
- 1403. Public employees and officials as victims.

203. HOMICIDE**XII. INSTRUCTIONS.(Cont'd)**

- 1404. Attempt.
- 1405. Solicitation to kill.
- 1406. Murder for hire; contract killing.
- 1407. Threats to take life.
- 1408. Killing in commission of or with intent to commit other unlawful act.
- 1409. — In general.
- 1410. — Intent or mens rea in general.
- 1411. — Arson.
- 1412. — Assault or battery.
- 1413. — Burglary or trespass.
- 1414. — Conspiracy and racketeering.
- 1415. — Controlled substances.
- 1416. — Escape.
- 1417. — Homicide.
- 1418. — Injuring or endangering child.
- 1419. — Kidnapping.
- 1420. — Larceny and other property offenses.
- 1421. — Robbery.
- 1422. — Sex offenses.
- 1423. — Weapons offenses.
- 1424. — Other particular offenses.
- 1425. — Multiple perpetrators.

(C) NECESSITY OF INSTRUCTION ON OTHER GRADE, DEGREE, OR CLASSIFICATION OF OFFENSE.

Assault or battery as included offense, see ASSAULT AND BATTERY ⚖️588. Effect of doubt as to grade or degree, see CRIMINAL LAW ⚖️795(4). Effect of defendant's objection or defense inconsistent with lesser charge, see CRIMINAL LAW ⚖️795(2.90). Sufficiency of instructions, see XII(B).

- 1450. In general.
- 1451. Evidence justifying or requiring instruction on other degree or offense in general.
- 1452. Necessity in absence of evidence of other degree or offense in general.
- 1453. Necessity when evidence shows degree charged in general.
- 1454. Reasonable or rational basis in general.
- 1455. Some, any, slight, or weak evidence in general.
- 1456. Degree or classification of homicide.
- 1457. Manslaughter.
- 1458. Degree or classification of manslaughter.
- 1459. Assault with intent to kill.
- 1460. Attempt.

XII. INSTRUCTIONS.(Cont'd)

- 1461. Solicitation to kill; contract killing.
- 1462. Threats to take life.

(D) PARTIES.

- 1465. In general.
- 1466. Aiding, abetting, or other participation in offense.
- 1467. Principals.
- 1468. Accessories.

(E) EXCUSES AND JUSTIFICATIONS.

- 1470. In general.
- 1471. Self-defense.
- 1472. — In general.
- 1473. — Necessity of instruction in general.
- 1474. — Necessity in absence of evidence of self-defense in general.
- 1475. — Necessity when evidence shows contrary in general.
- 1476. — Necessity when there is some, any, slight, or weak evidence of self-defense in general.
- 1477. — Requisites and sufficiency in general.
- 1478. — Conduct or circumstances surrounding incident.
- 1479. — Threats or hostile conduct by victim.
- 1480. — Aggression or provocation by accused.
- 1481. — Withdrawal after aggression.
- 1482. — Mutual combat.
- 1483. — Danger and imminence thereof.
- 1484. — Apprehension of danger.
- 1485. — Duty to retreat or avoid danger.
- 1486. — Resistance of arrest or other legal process.
- 1487. — Manner or means of self-defense; excessive force.
- 1488. — Effect of defendant's objection or of incompatible defense evidence.
- 1489. Defense of another person.
- 1490. Defense of property.
- 1491. Defense of dwelling or habitation.
- 1492. Accident or misfortune.
- 1493. Compulsion, necessity, or duress.

203. HOMICIDE**(F) CAPACITY TO COMMIT CRIME.**

- 1500. In general.
- 1501. Diminished capacity.
- 1502. Insanity.
- 1503. Extreme emotional disturbance or distress; temporary insanity.
- 1504. Persons with intellectual disabilities.
- 1505. Intoxication.
- 1506. — In general.
- 1507. — Involuntary intoxication.

XIII. VERDICT.

See also CRIMINAL LAW XX(K).

- 1550. In general.
- 1551. Form and requisites in general.
- 1552. Specification of grade or degree of offense.
- 1553. — Necessity in general.
- 1554. — When indictment charges degree or sets forth facts showing it.
- 1555. — Sufficiency.
- 1556. — Assessment of punishment as finding of degree.
- 1557. Assessment of punishment.
Death penalty, see SENTENCING AND PUNISHMENT ¶1784.
- 1558. Construction and operation.

XIV. SENTENCE AND PUNISHMENT.

Death penalty, see SENTENCING AND PUNISHMENT VIII. Reconsideration and modification of sentence, see SENTENCING AND PUNISHMENT XII.

- 1560. In general.
- 1561. Constitutional and statutory provisions.
- 1562. — In general.
- 1563. — Validity.
- 1564. — Retroactive operation.
- 1565. Extent of punishment in general.
- 1566. — In general.
- 1567. — Murder.
- 1568. — Manslaughter.
- 1569. — Assault with intent to kill.
- 1570. Life sentence.
- 1571. — In general.
- 1572. — Murder.
- 1573. — Manslaughter.
- 1574. — Assault with intent to kill.

204T. HUMAN TRAFFICKING AND SLAVERY**SUBJECTS INCLUDED**

Slavery, involuntary servitude, and peonage
 Trafficking in persons for labor or sexual servitude
 Transporting persons for illegal sexual activity or immoral conduct
 Compelling, inducing, or procuring someone to become a prostitute or live a life of prostitution
 Living with or accepting the earnings of a prostitute
 Promoting or facilitating prostitution
 Nature and extent of criminal or civil responsibility for such acts, and grounds of defense
 Civil liabilities and remedies for such acts
 Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Children, offenses against, *see also* INFANTS XII(C)
 Engaging in acts of prostitution, *see* PROSTITUTION
 Houses of prostitution, keeping, frequenting, etc., *see* DISORDERLY HOUSE
 Obscene exhibitions, acts, and conduct, *see* OBSCENITY
 Soliciting or inducing another person to engage in an act of prostitution, *see* PROSTITUTION

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- I. IN GENERAL, ¶1–10.
 - II. OFFENSES AND PROHIBITED PRACTICES, ¶11–80.
 - (A) NATURE AND ELEMENTS IN GENERAL, ¶11–30.
 - (B) PARTICULAR ELEMENTS, ¶31–50.
 - (C) INCHOATE OFFENSES; ATTEMPTS, ¶51–60.
 - (D) DEFENSES, ¶61–70.
 - (E) PARTIES TO OFFENSES; PERSONS LIABLE, ¶71–80.
 - III. ACTIONS, ¶81–100.
 - IV. PROSECUTIONS, ¶101–120.
 - V. HISTORICAL INSTITUTION OF SLAVERY, ¶121–154.

204T. HUMAN TRAFFICKING AND SLAVERY**V. HISTORICAL INSTITUTION OF SLAVERY—Cont'd**

(A) IN GENERAL, §§121–150.

(B) STATUS, RIGHTS, AND LIABILITIES OF FORMER SLAVES AND THEIR DESCENDANTS, §§151–154.

I. IN GENERAL.

1. In general.
2. Constitutional, statutory, and regulatory provisions.
3. — In general.
4. — Purpose and construction in general.
5. — Power to enact; validity.
 - (1). In general.
 - (2). Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
6. — Retroactive or prospective operation.
 - (1). In general.
 - (2). Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
7. What law governs.
8. Federal preemption.
9. Administrative agencies and proceedings.

II. OFFENSES AND PROHIBITED PRACTICES.**(A) NATURE AND ELEMENTS IN GENERAL.**

11. In general.
12. Slavery, involuntary servitude, and peonage in general.
13. — In general.
14. — Abolition in general.
15. — Particular cases and contexts.
 - (1). In general.
 - (2). Labor and employment.
 - (3). Serving in armed forces.
 - (4). Serving as witness.
 - (5). Criminal conviction, sentencing, and punishment.
 - (6). Prisoners and convicts.
 - (7). Pretrial detention.
 - (8). Imprisonment for debt.
 - (9). Commitment and custody of vulnerable persons.
16. Engaging in slave trade.
17. Forced labor, labor servitude, and labor trafficking.

II. OFFENSES AND PROHIBITED PRACTICES.(Cont'd)

18. Sexual servitude; sex trafficking.
19. Compelling, inducing, or procuring prostitution.
20. Pandering.
21. Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
22. — In general.
23. — Interstate, intra-territorial, or foreign travel.
24. — Nature of activity or conduct.
25. — State offenses and prohibitions.
26. Unlawful conduct with respect to documents; document servitude.
27. Benefiting from participation in trafficking venture.
28. Deriving support from prostitution; pimping.
29. Promoting prostitution.

(B) PARTICULAR ELEMENTS.

31. Age, condition, or status of victim.
32. Knowledge or intent of accused.
33. — In general.
34. — As to victim's age, condition, or status.
35. Consent.
36. — In general.
37. — Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
38. Coercion, enticement, or inducement.
39. — In general.
40. — Force, violence, or physical restraint.
41. — Threats, fear, or intimidation.
42. — Abuse of law or legal process.
43. — Misrepresentation, fraud, or deception.
44. — Materiality, reliance, and causation.
45. Injury or harm.

(C) INCHOATE OFFENSES; ATTEMPTS.

51. In general.
52. Particular cases.

(D) DEFENSES.

61. In general.

204T. HUMAN TRAFFICKING AND SLAVERY**II. OFFENSES AND PROHIBITED PRACTICES.(Cont'd)**

- 62. Consent.
- 63. — In general.
- 64. — Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
- 65. Knowledge or intent of accused; mistake of fact.

(E) PARTIES TO OFFENSES; PERSONS LIABLE.

- 71. In general.
- 72. Aiding and abetting.

III. ACTIONS.

- 81. In general.
- 82. Nature, form, and right of action.
- 83. Exclusive, concurrent, and conflicting remedies.
- 84. Conditions precedent.
- 85. Time to sue; limitations and laches.
- 86. Persons entitled to sue; parties; standing.
- 87. Pleading.
- 88. Evidence.
- 89. — In general.
- 90. — Presumptions, inferences, and burden of proof.
- 91. — Admissibility.
- 92. — Weight and sufficiency.
- 93. Trial.
- 94. — In general.
- 95. — Questions of law or fact.
- 96. — Instructions.
- 97. Monetary relief; damages.
- 98. — In general.
- 99. — Punitive or exemplary damages.
- 100. Costs and fees.

IV. PROSECUTIONS.

- 101. In general.
- 102. Indictment, information, or other charging instrument.
- 103. Evidence.
- 104. — In general.
- 105. — Presumptions, inferences, and burden of proof.
- 106. — Admissibility.
- 107. — Weight and sufficiency.
 - (1). In general.

IV. PROSECUTIONS.(Cont'd)

- (2). Slavery, involuntary servitude, and peonage in general.
- (3). Engaging in slave trade.
- (4). Forced labor, labor servitude, and labor trafficking.
- (5). Sexual servitude; sex trafficking.
- (6). Compelling, inducing, or procuring prostitution.
- (7). Pandering.
- (8). Transporting individuals for illegal sexual activity or immoral conduct; Mann Act.
- (9). — In general.
- (10). — State offenses and prohibitions.
- (11). Unlawful conduct with respect to documents; document servitude.
- (12). Benefiting from participation in trafficking venture.
- (13). Deriving support from prostitution; pimping.
- (14). Promoting prostitution.
- (15). Inchoate offenses; attempts.
- (16). Defenses.
- 108. Trial.
- 109. — In general.
- 110. — Questions of law or fact.
- 111. — Instructions.
- 112. Sentence and punishment.

V. HISTORICAL INSTITUTION OF SLAVERY.**(A) IN GENERAL.**

- 121. In general; nature, origin, and legality.
- 122. Slave trade.
- 123. Who were slaves.
- 124. Property in slaves.
- 125. — In general.
- 126. — Rights and powers of owners.
- 127. — Duties and liabilities of owners.
- 128. Transfers of slaves.
- 129. Hiring of slaves.
- 130. Fugitive slaves.
- 131. Regulation of persons incident to the existence of slavery.
- 132. Status in general.
- 133. Personal rights and disabilities.
- 134. Marriage of slaves.

205H. IMPLIED AND CONSTRUCTIVE CONTRACTS**V. HISTORICAL INSTITUTION
OF SLAVERY.(Cont'd)**

- 135. Rights of property of slaves.
- 136. Inheritance by, from, or through slaves.
- 137. Contracts by slaves.
- 138. Torts by slaves.
- 139. Actions by or against slaves.
- 140. Offenses by slaves.
- 141. Offenses against slaves.
- 142. Right to freedom.
- 143. Proceedings for freedom.
- 144. Manumission.
- 145. Emancipation.

**(B) STATUS, RIGHTS, AND LIABILITIES
OF FORMER SLAVES AND THEIR
DESCENDANTS.**

- 151. In general.
- 152. Badges and incidents of slavery.
- 153. Legal status of familial relationships of former slaves.
- 154. Reparations or other compensation.

**205H. IMPLIED AND
CONSTRUCTIVE
CONTRACTS****SUBJECTS INCLUDED**

- Obligations implied or imposed by law generally, and particularly the following obligations
- To repay money lent or advanced for temporary accommodation and use, independent of any instrument in writing promising such repayment
- To repay money paid or expended by one person, for the use or benefit of another who ought to have paid it, to a third person, independent of any instrument in writing requesting such payment or promising repayment
- To pay money received by one person, for the use or benefit of another, or to which another is entitled in equity and good conscience, independent of any special relation, agreement, or trust

To pay for use of real property of another, occupied by his permission, independent of any lease or agreement reserving or fixing a sum to be paid as rent

To pay for services rendered and materials furnished incident to the services, independent of any special relation or of any employment or promise to pay therefor

Rights, liabilities, and remedies of the parties in general

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Agreements, express or implied, for hiring of services—

For specific work, see **CONTRACTS**

Employment generally, see **LABOR AND EMPLOYMENT**

Interest on loans, see **INTEREST, USURY**

Assumpsit, proceedings in action of, see **ASSUMPSIT, ACTION OF**

Money or property received in representative or fiduciary capacity, see **GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, ATTORNEYS AND LEGAL SERVICES, PRINCIPAL AND AGENT**, and othe and other specific topics

Partial reimbursement of amount paid to discharge a common obligation, see **CONTRIBUTION**

Particular classes of persons, personal relations or occupations, services rendered by or incident to, see **ATTORNEYS AND LEGAL SERVICES, HEALTH**, and other specific topics

Promissory notes and other instruments in writing given for loans of money, see **COMMERCIAL PAPER**

Recovery of payments on executed contracts where no obligation to pay existed, but by fraud, mistake, duress, or other cause payment has been made, see **PAYMENT**

Rent, rights, and liabilities, see **LANDLORD AND TENANT**

Sale, implied, see **SALES**

Trusts, implied and constructive, see **TRUSTS**

I. NATURE AND GROUNDS OF OBLIGATION, ¶1-74.

(A) **IN GENERAL**, ¶1-9.

(B) **MONEY RECEIVED**, ¶10-29.

205H. IMPLIED AND CONSTRUCTIVE CONTRACTS**I. NATURE AND GROUNDS OF OBLIGATION—Cont'd**

(C) SERVICES RENDERED, ¶30–54.

(D) EFFECT OF EXPRESS CONTRACT, ¶55–69.

(E) DEFENSES AND PERSONS ENTITLED OR LIABLE, ¶70–74.

II. ACTIONS, ¶75–124.

(A) IN GENERAL, ¶75–79.

(B) PLEADING, ¶80–89.

(C) EVIDENCE, ¶90–109.

(D) AMOUNT OF RECOVERY, ¶110–119.

(E) TRIAL AND JUDGMENT, ¶120–124.

I. NATURE AND GROUNDS OF OBLIGATION.**(A) IN GENERAL.**

1. Contracts implied in general.
2. Constructive or quasi contracts.
- 2.1. — In general.
3. — Unjust enrichment.
4. — Restitution.
5. Money lent.
6. Money paid.
7. Use and occupation of realty.

(B) MONEY RECEIVED.*See also PAYMENT.*

10. In general.
11. Money or equivalent thereof.
12. Property other than money or proceeds thereof.
13. Nature of right.
14. Privity between parties.
15. Consideration or purpose for which money was received.
- 15.1. — In general.
16. — Necessity of actual reception by defendant.
17. — Proceeds of property converted by defendant.
18. — Failure of consideration by breach or rescission of contract or otherwise.
19. — Reception by defendant under promise or duty to pay plaintiff.
20. — Reception by defendant for special purpose not carried out.
21. — Double payment received by defendant.
22. — Reception by defendant by mistake.
23. Reception under claim of right.

I. NATURE AND GROUNDS OF OBLIGATION.(Cont'd)

24. Money wrongfully obtained.

25. Money received from third person.

(C) SERVICES RENDERED.

30. Work and labor in general; quantum meruit.

31. Materials furnished.

32. Expenses incurred.

33. Rendition and acceptance of services in general.

33.1. — In general.

34. — Implication of request or promise to pay.

35. — Effect of request or promise to pay.

36. — Fraud, mistake, or compulsion.

37. — Services rendered under agreement or direction of agent.

38. Consideration or purpose for which services were rendered.

38.1. — In general.

39. — Gratuitous services.

40. Relations between parties in general.

41. Services between persons in family relation.

41.1. — In general.

42. — Parent and child.

43. — Parent and son-in-law or daughter-in-law.

44. — Parent and stepchild.

45. — Foster parent and child.

46. — Brothers and sisters.

47. — Cohabitants.

48. — Uncle or aunt and nephew or niece.

(D) EFFECT OF EXPRESS CONTRACT.

55. In general.

56. Contract to lend money.

57. Contract to reimburse for money paid.

58. Lease or agreement for use or occupation.

59. Contract to pay over or repay money received.

60. Contract for services.

60.1. — In general.

61. — Contract invalid or unenforceable.

62. — Contract not fixing amount of compensation.

207. INCEST**I. NATURE AND GROUNDS OF OBLIGATION.(Cont'd)**

- 63. — Performance not according to terms of contract.
- 64. — Performance of additional or extra work.
- 65. — Part performance where contract is rescinded or abandoned and full performance is prevented.

(E) DEFENSES AND PERSONS ENTITLED OR LIABLE.

- 70. Defenses.
- 71. Persons entitled.
- 72. Persons liable.

II. ACTIONS.**(A) IN GENERAL.**

- 75. In general.
- 76. Parties.

(B) PLEADING.

- 80. In general.
- 81. Declaration, complaint, or petition.
- 82. Plea, answer, and subsequent pleadings.
- 83. Issues, proof, and variance.
- 83.1. — In general.
- 84. — Evidence admissible under pleadings.

(C) EVIDENCE.

- 90. In general.
- 91. Presumptions and burden of proof.
- 92. Admissibility in general.
- 93. Services rendered, admissibility.
- 93.1. — In general.
- 94. — Gratuitous services and relations between parties.
- 95. — Amount of compensation and value of services.
- 96. — Special contract.
- 97. — Skill used and sufficiency of performance.
- 98. Weight and sufficiency in general.
- 99. Services rendered, weight and sufficiency.
- 99.1. — In general.
- 100. — Nature of employment and promise to pay.
- 101. — Persons in family relation, services between.

II. ACTIONS.(Cont'd)

- 102. — Amount of compensation and value of services.
- 103. — Special contract.
- 104. — Skill used and sufficiency of performance.

(D) AMOUNT OF RECOVERY.

- 110. In general.
- 111. Effect of express contract.
- 112. Inadequate and excessive allowances.

(E) TRIAL AND JUDGMENT.

- 120. In general.
- 121. Questions for jury.
- 122. Instructions.
- 123. Verdict and findings.
- 124. Judgment.

207. INCEST**SUBJECTS INCLUDED**

Sexual intercourse between persons related to each other within such degrees that marriage between them is prohibited by law
 Nature and extent of criminal responsibility therefor, and grounds of defense
 Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Capacity to marry, see MARRIAGE AND COHABITATION

- 1. Nature of offense in general.
- 2. Statutory provisions.
- 3. Elements of offenses.
- 4. — In general.
- 5. — Relationship, and knowledge thereof.
- 6. — Criminal intercourse.
- 7. — Consent of parties and use of force.
- 8. Defenses.
- 8.5. Persons liable.
- 9. Indictment or information.

207. INCEST

- 9.1. — In general.
- 10. — Requisites and sufficiency.
- 11. — Issues, proof, and variance.
- 12. Evidence.
- 12.1. — In general.
- 13. — Admissibility.
- 14. — Weight and sufficiency in general.
- 15. — Corroboration of testimony of female.
- 16. Trial.

208. INDEMNITY**SUBJECTS INCLUDED**

Contracts, express or implied, to make good or compensate for loss or damage, sustained or anticipated, from acts or omissions of others as well as those of the persons indemnified, or to protect against claims of or liabilities to third persons

Nature, requisites, validity, incidents, construction, operation and effect of such contracts in general

Bonds and other instruments in writing promising such indemnity

Rights, liabilities and remedies of the parties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts of—

Guaranty, see GUARANTY

Insurance, see INSURANCE

Suretyship, see PRINCIPAL AND SURETY

Contribution, liability imposed by law rather than by contract for reimbursement, see CONTRIBUTION

Employee benefit plan or pension plan fiduciaries, indemnity for liabilities for breach of duty, see LABOR AND EMPLOYMENT ¶664

Environmental response and cleanup statutes, indemnity under, see ENVIRONMENTAL LAW

Frauds, statute of, requirements, see FRAUDS, STATUTE OF

Mortgages given as indemnity, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST

Particular classes of persons, contracts of indemnity by, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP and other specific topics

Particular officers and other persons, rights to demand indemnity, and matters relating only to indemnity given to any of them, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS, PUBLIC EMPLOYMENT and other specific topics

Veterans Administration's right to indemnity after default on Veterans Administration-guaranteed loan, see ARMED SERVICES

I. IN GENERAL, ¶20–24.

II. CONTRACTUAL INDEMNITY, ¶25–49.

III. INDEMNIFICATION BY OPERATION OF LAW, ¶50–84.

IV. CONCLUSIVENESS OF FORMER ADJUDICATION, ¶85–89.

V. ACTIONS, ¶90–109.

VI. RIGHTS AND REMEDIES OF INDEMNITOR, ¶110–112.

I. IN GENERAL.

20. Nature of obligation.

21. Constitutional and statutory provisions.

22. — In general.

23. — Validity.

24. What law governs.

II. CONTRACTUAL INDEMNITY.

25. In general.

26. Requisites and validity of contracts.

27. — In general.

28. — Bonds of indemnity.

29. — Unconscionability.

30. — Indemnitee's own negligence or fault.

(1). In general.

(2). Contract liability.

(3). Lease agreements; vehicle rental contracts.

(4). Personal injury liability.

(5). Contractors, subcontractors, and owners.

208. INDEMNITY**II. CONTRACTUAL INDEMNITY.(Cont'd)**

- (6). Environmental law.
- (7). Railroads.
- (8). Maritime cases.
- 31. Construction and operation of contracts.
 - (1). In general.
 - (2). Intention of the parties.
 - (3). Parties in general.
 - (4). Subject-matter in general.
 - (5). Liberal or strict construction.
 - (6). Indemnatee's own negligence or fault, in general.
 - (7). Duty to defend.
- 32. Concurrent fault; active or passive negligence.
- 33. Particular cases and issues.
 - (1). In general.
 - (2). Contract liability.
 - (3). Lease agreements; vehicle rental contracts.
 - (4). Personal injury liability.
 - (5). Contractors, subcontractors, and owners.
 - (6). Environmental law.
 - (7). Railroads.
 - (8). Maritime cases.
- 34. Scope and extent of liability.
- 35. — In general.
- 36. — Costs and expenses.
- 37. — Attorney fees.
- 38. — Interest.
- 39. — Profits.
- 40. Notice in general.
- 41. Notice of settlement.
- 42. Accrual of liability.
- 43. Accrual of duty to defend.
- 44. Consent to settlement.
- 45. Voluntary payment by indemnatee; necessity of compulsory payment.

III. INDEMNIFICATION BY OPERATION OF LAW.

- 50. In general.
- 51. Equitable indemnification in general.
- 52. Comparative equitable indemnity.
- 53. Common law indemnification.
- 54. Implied contract of indemnity.
- 55. Statutory duty to indemnify.

III. INDEMNIFICATION BY OPERATION OF LAW.(Cont'd)

- 56. Right of one compelled to pay against person primarily liable.
- 57. — In general.
- 58. — Joint tortfeasors or parties in pari delicto in general.
- 59. — Relative culpability.
- 60. — Active or passive negligence.
- 61. — Secondary liability.
- 62. Duty to defend.
- 63. Particular cases and issues.
- 64. — In general.
- 65. — Torts, in general.
- 66. — Motor vehicles.
- 67. — Contractors, subcontractors, or owners.
- 68. — Land, premises, highways, or streets.
- 69. — Maritime cases.
- 70. — Railroads.
- 71. — Indemnity to master or principal from servant or agent.
- 72. — Successive sellers; products liability.
- 73. Scope and extent of liability.
- 74. — In general.
- 75. — Costs and expenses.
- 76. — Attorney fees.
- 77. — Interest.
- 78. — Profits.
- 79. Notice in general.
- 80. Notice of settlement.
- 81. Accrual of liability.
- 82. Accrual of duty to defend.
- 83. Consent to settlement.
- 84. Voluntary payment by indemnatee; necessity of compulsory payment.

IV. CONCLUSIVENESS OF FORMER ADJUDICATION.

- 85. In general.

V. ACTIONS.

- 90. In general.
- 91. Form of remedy.
- 92. Persons entitled to sue and parties.
- 93. Conditions precedent.
- 94. Defenses.
- 95. Settlement with third party as bar to action.

208. INDEMNITY**V. ACTIONS.**(Cont'd)

- 96. Time to sue.
- 97. Pleading.
- 98. Evidence.
- 99. — In general.
- 100. — Presumptions and burden of proof.
- 101. — Admissibility.
- 102. — Weight and sufficiency.
- 103. Instructions.
- 104. Questions for jury.
- 105. Verdict and findings.
- 106. Judgment and enforcement thereof.

**VI. RIGHTS AND REMEDIES
OF INDEMNITOR.**

- 110. In general.
- 111. Discharge.
- 112. Actions between indemnitee and indemnitor.

209. INDIANS**SUBJECTS INCLUDED**

- Status, rights, and disabilities of Indians and other native peoples of North America
- Regulation and protection of such persons and their property, real and personal, and their religious and cultural sites, items, and practices
- Leasing, sale, and other alienation of Indian lands
- Administrative agencies, officers, and agents dealing with Indians
- Domestic relations, issues peculiar to Indians and Indian children
- Tribes and government of Indian country and the reservations, including tribal courts
- Laws and regulations promulgated by tribal governments
- Treaties with the United States and others
- Indian gaming, establishment and regulation
- Actions in state or federal court against or involving Indians and tribes, as to issues peculiar to them

Sovereign immunity of Indian tribes and officials

Regulation of intoxicating liquor in Indian country and on the reservations

Indian hunting and fishing rights, mineral and oil rights, and water rights

Offenses and prosecutions involving Indians or other persons in Indian country and on the reservations

Proceedings in tribal courts and agencies

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Federal and state laws and the application thereof to Indians or tribes, but as to which that status is neither determinative nor relevant, see other topics

State motor vehicle laws applied to Indians and on the reservations, see AUTOMOBILES

Comity afforded to tribal court judgments, see COURTS

Concurrent state-tribal court jurisdiction, see COURTS ⇨530

Condemnation and the “taking” of Indian lands under the Fifth Amendment, see EMINENT DOMAIN

Judicial notice of the laws and customs of Indians, see EVIDENCE ⇨36

Federal question jurisdiction in cases involving Indians or Indian lands, see FEDERAL COURTS ⇨2306

Habeas corpus affecting Indians or proceedings in tribal courts, see HABEAS CORPUS

Taxes imposed by the Federal Government or the states upon Indians or their tribes, see INTERNAL REVENUE and TAXATION

Enforcement of tribal court judgments in non-tribal courts, see JUDGMENT ⇨832.5

Indian customs as to marriage, see MARRIAGE AND COHABITATION

General water law principles applied to the ownership or transfer of submerged Indian lands, see WATER LAW

Lands derived from Indians, titles to, see PUBLIC LANDS

Claims against the United States under laws relating to Indians, see UNITED STATES

Testamentary capacity of Indians, see WILLS

209. INDIANS

Assertion of sovereign immunity by a tribe against a subpoena asking for documents, see WITNESSES

- I. IN GENERAL, ¶100–120.
- II. TREATIES IN GENERAL, ¶121–125.
- III. PROTECTION OF PERSONS AND PERSONAL RIGHTS; DOMESTIC RELATIONS, ¶126–149.
- IV. REAL PROPERTY, ¶150–209.
- V. GOVERNMENT OF INDIAN COUNTRY, RESERVATIONS, AND TRIBES IN GENERAL, ¶210–229.
- VI. ACTIONS, ¶230–259.
- VII. OFFENSES AND PROSECUTIONS, ¶260–319.
 - (A) IN GENERAL, ¶260–269.
 - (B) JURISDICTION AND POWER TO ENFORCE CRIMINAL LAWS, ¶270–299.
 - (C) PROCEDURE AND PUNISHMENT, ¶300–319.
- VIII. INTOXICATING LIQUORS, ¶320–329.
- IX. GAMING, ¶330–349.
- X. HUNTING, FISHING, AND SIMILAR RIGHTS, ¶350–399.
- XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES, ¶400–662.
 - (A) IN GENERAL, ¶400–409.
 - (B) ADMINISTRATIVE PROCEEDINGS, ¶410–499.
 - (C) CIVIL ACTIONS AND PROCEEDINGS, ¶500–599.
 - (D) CRIMINAL PROSECUTIONS AND PROCEEDINGS, ¶600–649.
 - (E) JURY, ¶650–659.
 - (F) COSTS AND FEES, ¶660–662.

I. IN GENERAL.

- 100. In general.
- 101. Who are Indians or Native Americans.
For purposes of criminal offenses and prosecutions, see ¶262.
- 102. Status of Indian nations or tribes.
- 103. — In general.
- 104. — Federal recognition.
- 105. — Trust relationship; fiduciary duty of United States.
Monetary claims against the United States for breach of fiduciary duty, see UNITED STATES.
- 106. Authority over and regulation of tribes in general.
- 107. Constitutional and statutory provisions.
- 108. — In general.

I. IN GENERAL.(Cont'd)

- 109. — Purpose and construction.
- 110. — Validity.
- 111. — Retroactivity.
- 112. Administrative agencies, officers, and agents.
- 113. — In general.
- 114. — Appointment and tenure.
- 115. — Compensation, expenses, and reimbursement.
- 116. — Authority in general.
- 117. — Duties and liabilities.
- 118. — Administrative proceedings.
Tribal agency proceedings, see XI.
- 119. Status and disabilities of Indians in general.
- 120. Regulation of intercourse with Indians.
See also, COMMERCE ¶6.

II. TREATIES IN GENERAL.

- 121. In general.
- 122. Validity.
- 123. Alteration or abrogation in general.
- 124. Construction and operation.
- 125. Descendants of signatory tribes.

III. PROTECTION OF PERSONS AND PERSONAL RIGHTS; DOMESTIC RELATIONS.

- 126. In general.
- 127. Constitutional and statutory provisions.
- 128. — In general.
- 129. — Purpose and construction.
- 130. — Validity.
- 131. Domestic relations, marriage and dissolution of marriage in general.
See also DIVORCE and MARRIAGE AND COHABITATION.
- 132. Infants.
See also INFANTS.
- 133. — In general.
- 134. — Dependent children; termination of parental rights.
 - (1). In general.
 - (2). “Active efforts” requirement.
 - (3). Jurisdiction; state or tribal court.
 - (4). Actions and proceedings in general.
 - (5). Notice of pending state proceedings and right to intervene.

209. INDIANS**III. PROTECTION OF PERSONS AND
PERSONAL RIGHTS; DOMESTIC
RELATIONS.**(Cont'd)

- 135. — Juvenile delinquency and youthful offenders.
- 136. — Child custody.
See also CHILD CUSTODY.
- 137. — Child support.
See also CHILD SUPPORT.
- 138. — Adoption of persons.
See also ADOPTION.
- 139. Financial assistance, support, and supplies.
- 140. Education and training.
- 141. Personal property.
 - (1). In general.
 - (2). Trust funds and payments.
- 142. Contracts.
 - (1). In general.
 - (2). Legal services.
- 143. Liabilities for depredations and injuries to property.
See also UNITED STATES ¶414.
- 144. Religious and cultural sites, items, and practices.
- 145. Eligibility to vote.
- 146. Eligibility for office, public employment, or service.
- 147. Admission to citizenship.
- 148. Removal of persons under laws relating to Indians.
Removal of non-members by tribes, see ¶223.
- 149. Penalties under laws relating to Indians.

IV. REAL PROPERTY.

Eminent domain and "takings" under the Fifth Amendment, see EMINENT DOMAIN.

- 150. In general.
- 151. Title and rights to Indian lands in general.
General water law principles applied to the ownership or transfer of submerged Indian lands, see WATER LAW.
- 152. Land held in trust in general.
- 153. Loss or termination of rights in general; extinguishment.
- 154. Treaties, construction, and operation in general.
- 155. Cession by treaties.
- 156. Reservations or grants to Indian nations or tribes.
- 157. — In general.

IV. REAL PROPERTY.(Cont'd)

- 158. — Lands included and boundaries; appropriation and diminishment.
- 159. — Disestablishment and termination.
- 160. Grants and patents to individual Indians in general.
Allotments, see ¶161.
- 161. Allotment or partition.
- 162. — In general.
- 163. — Lands subject.
- 164. — Persons entitled; enrollment and record thereof.
 - (1). In general.
 - (2). Evidence.
- 165. — Preferential rights.
- 166. — Homestead as including allotment.
- 167. — Incompetent allottees.
- 168. — Patents.
- 169. — Cancellation of allotments.
- 170. — Operation and effect.
Alienation of allotments, see ¶175.
- 171. Alaska native claims settlement.
See also ¶228.
- 172. Alienation in general.
- 173. — In general.
- 174. — Approval by, or through, federal authorities in general.
- 175. — Allotments.
- 176. Leases.
- 177. — In general.
- 178. — Power to lease lands and validity in general.
- 179. — Supervision by federal officers.
- 180. — Construction and operation in general.
- 181. — Duration and termination.
- 182. — Assignment, subletting, or other transfer.
- 183. — Rent and recovery thereof.
- 184. — Recovery of possession of demised premises.
- 185. — Improvements.
- 186. — Rights and liabilities of tenant under invalid lease.
- 187. Rights of way and easements.
- 188. Water rights and management.
- 189. — In general.
- 190. — Amount, measure, and allowable purposes.
- 191. Mineral rights and management.

209. INDIANS**IV. REAL PROPERTY.**(Cont'd)

- 192. — In general.
- 193. — Leases in general.
- 194. — Oil and gas.
- 195. Cutting and sale of timber.
- 196. Descent and distribution.
- 197. — In general.
- 198. — Allotments.
- 199. Trespass.
See also *TRESPASS*.
- 200. Execution; judicial sale.
- 201. Adverse possession and improvements by intruders.

V. GOVERNMENT OF INDIAN COUNTRY, RESERVATIONS, AND TRIBES IN GENERAL.

- 210. In general.
- 211. State regulation.
- 212. Preemption.
As to Indian gaming, see *¶332*.
- 213. Indian civil rights laws.
- 214. Tribal constitution and bylaws.
- 214.5. Tribal elections in general.
- 215. Tribal officers.
Sovereign immunity of tribal officers, see *¶236*; *sovereign immunity of tribal officers in cases brought in tribal courts, see* *INDIANS ¶403*.
- 216. — In general.
- 217. — Election or appointment.
- 218. — Removal, recall, suspension, and other discipline.
- 219. Tribal or Indian courts.
Tribal court proceedings, see *XI*. *Exhaustion of tribal court remedies before a federal district court can exercise jurisdiction, see* *¶244*.
- 220. — In general.
Enforcement of tribal court judgment in non-tribal court, see *JUDGMENT*.
- 221. — Jurisdiction.
Concurrent jurisdiction of state and tribal courts, see *COURTS ¶530*.
- 222. Membership.
- 223. Regulation of non-members by tribe or tribal government.
- 224. Employees of tribe.
In gaming facilities, see *IX*.
- 225. Taxes imposed by tribe.
See also *TAXATION* and *INTERNAL REVENUE*.
- 226. Licenses granted by tribe in general.
See also *LICENSES*.
- 227. Tribal zoning, planning, and building regulations; housing authorities.

See also *ZONING AND PLANNING*.

- 228. Native village corporations.
See also *¶171*.

VI. ACTIONS.*Involving domestic relations, see* *III*; *criminal prosecutions in general, see* *VII*; *gaming, see* *IX*; *hunting and fishing, see* *X*; *in tribal courts, see* *XI*.

- 230. In general.
- 231. Rights of action.
- 232. — In general.
- 233. — Statutory.
- 234. Sovereign immunity.
- 235. — In general.
- 236. — Tribal officers and officials.
- 237. Standing.
- 238. Jurisdiction.
- 239. — In general.
- 240. — Federal courts.
Federal question jurisdiction, see *FEDERAL COURTS*.
- 241. — State courts.
State courts acting as federal agencies in the approval of alienation of Indian lands, see *¶172*.
 - (1). In general.
 - (2). Probate jurisdiction.
- 242. Conditions precedent; exhaustion.
- 243. — In general.
- 244. — Exhaustion of tribal court remedies.
- 245. Limitations and laches.
Computation, accrual, and tolling of statutes of limitations, see *LIMITATION OF ACTIONS*.
- 246. Parties.
See also *FEDERAL CIVIL PROCEDURE II*.
- 247. Process.
- 248. Pleading.
- 249. Evidence.
- 250. Trial.
- 251. Judgment.
- 252. Appeal or other review.
- 253. Costs.

VII. OFFENSES AND PROSECUTIONS.*Crimes involving intoxicating liquor, see* *VIII*; *gaming, see* *IX*; *hunting and fishing, see* *X*.**(A) IN GENERAL.**

- 260. In general.
- 261. Constitutional and statutory provisions.
- 262. Who is an Indian; tribal status.
- 263. What is Indian country in general.

209. INDIANS**VII. OFFENSES AND PROSECUTIONS.**(Cont'd)

- 264. Crimes by Indians in Indian country or on reservation.
- 265. Crimes by Indians out of Indian country or off reservation.
- 266. Crimes by non-Indians.

(B) JURISDICTION AND POWER TO ENFORCE CRIMINAL LAWS.

State motor vehicle laws applied to Indians and on the reservations, see AUTOMOBILES.

- 270. In general.
- 271. Indian defendant.
- 272. — In general.
- 273. — Non-member of tribe in general.
- 274. — Crime committed in Indian country or on reservation.
 - (1). In general.
 - (2). State court or authorities.
 - (3). Tribal court or authorities.
 - (4). Federal court or authorities.
 - (5). Concurrent jurisdiction.
- 275. — Crime committed out of Indian country or off reservation.
 - (1). In general.
 - (2). State court or authorities.
 - (3). Tribal court or authorities.
 - (4). Federal court or authorities.
 - (5). Concurrent jurisdiction.
- 276. Non-Indian defendant.
- 277. — In general.
- 278. — Crime committed in Indian country or on reservation.

(C) PROCEDURE AND PUNISHMENT.

Proceedings in tribal court, see XI.

- 300. In general.
- 301. Extradition.
- 302. Venue.
- 303. Indictment and information.
- 304. Evidence.

See also CRIMINAL LAW XVII.
- 305. — In general.
- 306. — Presumptions and burden of proof.
- 307. — Weight and sufficiency.
- 308. Questions for jury.
- 309. Instructions.
- 310. Appeal.
- 311. Sentencing and punishment.

VIII. INTOXICATING LIQUORS.

- 320. In general.
- 321. Introduction into, or possession in, Indian country.
- 322. Selling or furnishing.
- 323. State or tribal regulation.

IX. GAMING.

- 330. In general.
- 331. Constitutional and statutory provisions.
- 332. Preemption.
- 333. Establishment and regulation in general.
- 334. — In general.
- 335. — Lands available for gaming.
- 336. — Social and ceremonial gaming.
- 337. — Other gaming.
 - (1). In general.
 - (2). Activities otherwise permitted by state.
 - (3). Tribal-state compacts.
- 338. Operation and conduct of authorized gaming.
- 339. — In general.
- 339.5. — Employment.
- 340. — Fees and revenue.

State or federal taxes, see TAXATION and INTERNAL REVENUE.
- 341. Administrative agencies and proceedings.

Tribal agency proceedings, see XI.
- 342. Actions.

Actions in tribal court, see XI.
- 343. Offenses and prosecutions.

Proceedings in tribal court, see XI.

X. HUNTING, FISHING, AND SIMILAR RIGHTS.

See also FISH and GAME. Proceedings in tribal courts and agencies, see XI.

- 350. In general.
- 351. Federal statutes protecting particular animals.

See also ENVIRONMENTAL LAW XI.
- 352. Abrogation, modification, or relinquishment in general.
- 353. State regulation in general.
- 354. Violation; enforcement.
- 355. Offenses.
- 356. — In general.
- 357. — Jurisdiction and enforcement.
- 358. — Prosecution and punishment.
- 359. Fishing rights.

209. INDIANS**X. HUNTING, FISHING, AND SIMILAR RIGHTS.(Cont'd)**

- 360. — In general.
- 361. — Indians and tribes holding rights.
- 362. — Abrogation, modification, or relinquishment in general.
- 363. — State regulation in general.
- 364. — Place or station; off-reservation activity.
- 365. — Manner and time; netting.
- 366. — Allocation or apportionment of fish.
- 367. — Actions and proceedings.
- 368. — Offenses.
 - (1). In general.
 - (2). Jurisdiction and enforcement.
 - (3). Prosecution and punishment.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.**(A) IN GENERAL.**

- 400. In general.
- 401. Courts in general.
- 402. Nature and form of remedy.
- 403. Liability of tribes, tribal officers and agents; immunity.
- 404. — In general.
- 405. — Waiver and consent.
- 406. — Particular cases.

(B) ADMINISTRATIVE PROCEEDINGS.

- 410. In general.
- 411. Investigations.
- 412. Rules and regulations.
- 413. Jurisdiction and authority.
- 414. Time for proceedings.
- 415. Parties.
- 416. Notice and appearance.
- 417. Pleading, petition, or application.
- 418. Hearing.
- 419. — In general.
- 420. — Access; open meeting.
- 421. — Evidence and witnesses.
- 422. Determination.
- 423. — In general.
- 424. — Time for determination.
- 425. — Voting; bias and disqualification.
- 426. — Findings, conclusions, minutes, or records.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.(Cont'd)

- 427. — Effect of decision; res judicata.
- 428. — Rehearing or reconsideration.
- 429. Further administrative review.
- 430. Judicial review.
- 431. — In general.
- 432. — Exhaustion of remedies.
- 433. — Decisions reviewable; jurisdiction.
- 434. — Persons entitled to seek review.
- 435. — Preservation of error.
- 436. — Time for proceedings.
- 437. — Parties and intervention.
- 438. — Process, notice or appearance.
- 439. — Pleading.
- 440. — Scope of review.
 - (1). In general.
 - (2). Trial de novo.
 - (3). Wisdom, judgment, or opinion.
 - (4). Arbitrary, unreasonable, or capricious action; illegality.
 - (5). Harmless or prejudicial error.
 - (6). Fact questions.
- 441. — Determination and relief.
- 442. — Further review.
- 443. Enforcement and contempt.

(C) CIVIL ACTIONS AND PROCEEDINGS.

- 500. In general.
- 501. Jurisdiction and venue.
- 502. What law governs.
- 503. Conditions precedent.
- 504. — In general.
- 505. — Exhaustion of remedies.
- 506. — Notice of claim or injury.
- 507. Persons entitled to sue; standing.
- 508. Time for proceedings.
- 509. Parties.
- 510. Process, notice and appearance.
- 511. Pleading.
- 512. Motions.
- 513. Pretrial procedure.
- 514. — In general.
- 515. — Discovery.
- 516. — Dismissal.
- 517. — Continuance.
- 518. Trial or hearing.
- 519. — In general.
- 520. — Evidence and witnesses.

209. INDIANS**XI. PROCEEDINGS IN TRIBAL COURTS
AND AGENCIES.(Cont'd)**

- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Admissibility of evidence.
- (4). Weight and sufficiency of evidence.
- 521. — Questions for jury.
- 522. — Instructions.
- 523. — Verdict and findings.
- 524. — Rehearing or reconsideration.
- 525. New trial.
- 526. Judgment.
- 527. — In general.
- 528. — Consent and settlement.
- 529. — Default.
- 530. — Summary judgment.
- 531. — Effect of judgment; res judicata.
- 532. — Effect of judgments from other tribes.
- 533. Relief granted.
- 534. — In general.
- 535. — Monetary relief and damages in general.
- 536. — Punitive or exemplary damages.
- 537. — Injunctive and declaratory relief.
- 538. — Prerogative writs.
- 539. Enforcement and contempt; prejudgment remedies.
- 540. Review.
- 541. — In general.
- 542. — Decisions reviewable.
- 543. — Right of review; standing.
- 544. — Preservation of grounds for review.
- 545. — Proceedings.
- 546. — Record, assignment of errors and briefs.
- 547. — Scope of review.
- 548. — Determination.
- 549. — Further review.

**(D) CRIMINAL PROSECUTIONS
AND PROCEEDINGS.**

- 600. In general.
- 601. Jurisdiction and venue.
- 602. Time for bringing prosecution.
- 603. Indictment and information; grand jury.
- 604. Preliminary proceedings; bail.
- 605. Arraignment and pleas.

**XI. PROCEEDINGS IN TRIBAL COURTS
AND AGENCIES.(Cont'd)**

- 606. Dismissal, nol pros or discontinuance.
- 607. Trial.
- 608. — In general.
- 609. — Time considerations; speedy trial.
- 610. — Evidence and witnesses in general.
- 611. — Presumptions and burden of proof.
- 612. — Admissibility of evidence.
- 613. — Weight and sufficiency of evidence.
- 614. — Questions for jury.
- 615. — Instructions.
- 616. — Verdict and findings.
- 617. — Rehearing or reconsideration.
- 618. New trial.
- 619. Judgment.
- 620. Sentence and punishment.
- 621. — In general.
- 622. — Proceedings.
- 623. — Fines and penalties.
- 624. — Imprisonment.
- 625. — Probation, parole, and other supervision.
- 626. — Restitution and reparation.
- 627. — Other alternative dispositions.
- 628. Review.
- 629. — In general.
- 630. — Decisions reviewable and right of review.
- 631. — Preservation of error.
- 632. — Proceedings.
- 633. — Record, assignment of errors and briefs.
- 634. — Scope of review.
- 635. — Determination.
- 636. — Further appeal.
- 637. Post-conviction relief.
- 638. Counsel.
- 639. Contempt.
- 640. Juvenile delinquency.

(E) JURY.

- 650. In general.
- 651. Right to jury trial.
- 652. Competency, challenges and objections.

(F) COSTS AND FEES.

- 660. In general.

210. INDICTMENTS AND CHARGING INSTRUMENTS**XI. PROCEEDINGS IN TRIBAL COURTS
AND AGENCIES.(Cont'd)**

661. Attorney fees in general.
662. Criminal prosecutions.

**210. INDICTMENTS AND CHARGING
INSTRUMENTS****SUBJECTS INCLUDED**

Formal written accusations of public offenses,
presented by grand juries or preferred by
prosecuting officers, whether in form of
indictment, presentment, information, or
complaint

Necessity for presentment or indictment by
grand jury

Finding, indorsing, filing, and requisites of
such accusations

Objections thereto, motions to quash, etc.,
demurrers thereto, and amendment thereof

Joinder of parties and offenses, and variance
between averments and proof

Conviction of offense included in that
charged

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Arraignment and pleas to indictments and
trial thereof, see CRIMINAL LAW

Grand jury, organization and proceedings, see
GRAND JURY

Municipal ordinances, prosecutions for viola-
tion, see MUNICIPAL CORPORATIONS

Particular offenses, accusations and proceed-
ings thereon, see specific topics

Preliminary complaints and proceedings
thereon before indictment, see CRIMINAL
LAW

- I. IN GENERAL, ⚭301–330.
II. FINDING OR FILING, ⚭331–440.
(A) IN GENERAL, ⚭331–340.
(B) INDICTMENT, ⚭341–380.

II. FINDING OR FILING—Cont'd

(C) INFORMATION OR COMPLAINT,
⚭381–420.

(D) TIME FOR FINDING OR FILING,
⚭421–440.

III. FORMAL REQUISITES, ⚭441–500.

(A) IN GENERAL, ⚭441–450.

(B) INDICTMENT, ⚭451–480.

(C) INFORMATION OR COMPLAINT,
⚭481–500.

**IV. REQUISITES AND SUFFICIENCY OF
ACCUSATION, ⚭501–630.**

(A) IN GENERAL, ⚭501–540.

(B) NATURE, ELEMENTS, AND INCI-
DENTS OF OFFENSES IN GEN-
ERAL, ⚭541–580.

(C) DESIGNATION OR DESCRIPTION
OF PERSONS, ⚭581–600.

(D) ANTICIPATION OF DEFENSES,
⚭601–610.

(E) MULTIPLE COUNTS, ⚭611–620.

(F) MATTERS NOT KNOWN TO
GRAND JURY, ⚭621–630.

V. BILL OF PARTICULARS, ⚭631–700.

(A) IN GENERAL, ⚭631–650.

(B) PARTICULAR CASES AND OF-
FENSES, ⚭651–680.

(C) PROCEEDINGS, ⚭681–690.

(D) EFFECT OF BILL, ⚭691–700.

VI. JOINDER, ⚭701–800.

(A) IN GENERAL, ⚭701–710.

(B) DEFENDANTS, ⚭711–720.

(C) COUNTS, ⚭721–750.

(D) PARTICULAR CASES AND OF-
FENSES, ⚭751–780.

(E) ELECTION, ⚭781–800.

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(A) IN GENERAL, ⚭841–860.

(B) DESIGNATION OR DESCRIPTION
OF PERSONS, ⚭861–870.

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GRAND JURY, ⚭871–880.

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AND ALLEGATIONS, ⚭881–890.

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(A) IN GENERAL, ⚭901–920.

(B) STRIKING ALLEGATIONS; SUR-
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(C) QUASHING OR SET ASIDE,
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(D) DISMISSAL, ⚭981–1000.

(E) DEMURRER, ⚭1001–1020.

X. AMENDMENT, ⚭1021–1140.

(A) IN GENERAL, ⚭1021–1030.

210. INDICTMENTS AND CHARGING INSTRUMENTS**X. AMENDMENT—Cont'd**

- (B) AMENDMENT OF INDICTMENT IN GENERAL, ⚭1031–1050.
- (C) AMENDMENT OF INFORMATION OR COMPLAINT IN GENERAL, ⚭1051–1070.
- (D) PARTICULAR CASES AND OFFENSES, ⚭1071–1110.
- (E) PROCEEDINGS TO AMEND, ⚭1111–1120.
- (F) AMENDMENT OF BILL OF PARTICULARS, ⚭1121–1130.
- (G) EFFECT OF AMENDMENT, ⚭1131–1140.

XI. WAIVER OF DEFECTS AND OBJECTIONS, ⚭1141–1170.**XII. AID BY VERDICT, ⚭1171–1178.****I. IN GENERAL.**

- 301. In general.
- 302. Constitutional and statutory provisions.
- 303. — In general.
- 304. — Purpose and construction in general.
- 305. — Applicability of federal constitution to states.
- 306. — Validity.
 - (1). In general.
 - (2). Finding or filing.
 - (3). Formal requisites.
 - (4). Requisites and sufficiency of accusation.
 - (5). Bill of particulars.
 - (6). Joinder.
 - (7). Included offenses.
 - (8). Variance between allegations and proof.
 - (9). Objections.
 - (10). Amendment.
- 307. — Retroactive or prospective operation.
- 308. Form of accusation.
- 309. — In general.
- 310. — Indictment.
- 311. — Information or complaint.
- 312. — Infamous crimes.
- 313. — Extent of punishment.
- 314. — Felony or misdemeanor.
- 315. — Particular cases and offenses.
 - (1). In general.
 - (2). Arson and malicious mischief.
 - (3). Assault and battery.

I. IN GENERAL.(Cont'd)

- (4). Burglary and trespass.
- (5). Conspiracy, racketeering, and money laundering.
- (6). Controlled substances.
- (7). Counterfeiting and forgery.
- (8). Disorderly conduct and breach of the peace.
- (9). Escape.
- (10). Extortion, threats, stalking, and harassment.
- (11). Fraud and false pretenses.
- (12). Gambling offenses.
- (13). Homicide.
- (14). Immigration offenses.
- (15). Kidnapping and false imprisonment.
- (16). Larceny, embezzlement, and receiving stolen property.
- (17). Liquor offenses.
- (18). Minors and endangered persons, offenses against.
- (19). Motor vehicle offenses.
- (20). Obscenity and lewdness.
- (21). Obstructing justice, bribery, and perjury.
- (22). Robbery.
- (23). Sex offenses, incest, and prostitution.
- (24). Tax and internal revenue offenses.
- (25). Weapons and explosives.
- (26). Other particular offenses.
- (27). Multiple offenses.
- 316. Waiver.
- 317. — In general.
- 318. — Right to waive.
- 319. — Form and sufficiency.
 - (1). In general.
 - (2). Particular cases and offenses.
- 320. Effect of charging instrument on jurisdiction.
- 321. — In general.
- 322. — Necessity to confer jurisdiction.
- 323. — Defects in charging instrument.
- 324. — Effect of waiver.

210. INDICTMENTS AND CHARGING INSTRUMENTS**II. FINDING OR FILING.****(A) IN GENERAL.**

331. In general.

(B) INDICTMENT.

- 341. In general.
- 342. Jurisdiction.
- 343. Authority to file.
- 344. Preliminary proceedings.
- 345. — In general.
- 346. — Necessity; leave or order of court.
- 347. — Conduct of hearing or examination.
- 348. Finding of the grand jury.
- 349. — In general.
- 350. — Validity in general.
 - (1). In general.
 - (2). Presumption of validity.
- 351. — Grand jury irregularities.
 - (1). In general.
 - (2). Representation of the community.
 - (3). Bias.
 - (4). Presence of unauthorized person.
 - (5). Instructions.
 - (6). Prosecutorial misconduct in general.
 - (7). Failure to present exculpatory evidence.
 - (8). Use of false or perjured testimony.
 - (9). Number of jurors.
- 352. Evidence supporting indictment.
- 353. — In general.
- 354. — Judicial review of evidence.
- 355. — Presumptions and burden of proof.
- 356. — Competency or legality of evidence supporting indictment.
 - (1). In general.
 - (2). Hearsay.
 - (3). Illegally obtained evidence in general.
 - (4). Searches and seizures; arrest.
 - (5). Statements, confessions, and admissions.
- 357. — Sufficiency of evidence supporting indictment.
 - (1). In general.
 - (2). Degree of proof in general.
 - (3). Probable cause.

II. FINDING OR FILING.(Cont'd)

- (4). Prima facie case.
- (5). Evidence sufficient to convict.
- (6). Corroboration of witnesses.
- (7). Particular cases and offenses.
- (8). — In general.
- (9). — Arson and malicious mischief.
- (10). — Assault and battery.
- (11). — Burglary and trespass.
- (12). — Conspiracy, racketeering, and money laundering.
- (13). — Controlled substances.
- (14). — Counterfeiting and forgery.
- (15). — Disorderly conduct and breach of the peace.
- (16). — Escape.
- (17). — Extortion, threats, stalking, and harassment.
- (18). — Fraud and false pretenses.
- (19). — Gambling offenses.
- (20). — Homicide.
- (21). — Immigration offenses.
- (22). — Kidnapping and false imprisonment.
- (23). — Larceny, embezzlement, and receiving stolen property.
- (24). — Liquor offenses.
- (25). — Minors and endangered persons, offenses against.
- (26). — Motor vehicle offenses.
- (27). — Obscenity and lewdness.
- (28). — Obstructing justice, bribery, and perjury.
- (29). — Robbery.
- (30). — Sex offenses, incest, and prostitution.
- (31). — Tax and internal revenue offenses.
- (32). — Weapons and explosives.
- (33). — Other particular offenses.
- (34). — Multiple offenses.
- 358. — Impeachment or support by testimony of grand jurors.
- 359. Return, filing, and recording.
- 360. — In general.
- 361. — Open court.
- 362. Suppressing, sealing, or filing away.
- 363. Loss or destruction.

210. INDICTMENTS AND CHARGING INSTRUMENTS**II. FINDING OR FILING.(Cont'd)**

- 364. Successive or superseding indictments.
- 365. — In general.
- 366. — Relationship to original counts or charges.
- 367. — Particular occasions for reindictment.
 - (1). In general.
 - (2). Dismissal of prior indictment.
 - (3). Violation of plea bargain.
 - (4). Mistrial.
 - (5). Appeal.
- 368. — Vindictiveness.
- 369. — Prejudice.
- 370. — Proceedings.
- 371. — Effect in general.
 - (1). In general.
 - (2). Existing indictment.
- 372. Indictment after information or complaint.
- 373. Failure to find; no bill.
- 374. — In general.
- 375. — Effect in general.
- 376. — Resubmission.
 - (1). In general.
 - (2). Judicial order or approval.

(C) INFORMATION OR COMPLAINT.

- 381. In general.
- 382. Jurisdiction.
- 383. Authority to file.
- 384. — In general.
- 385. — Private persons.
- 386. Preliminary proceedings.
- 387. — In general.
- 388. — Necessity; leave or order of court.
- 389. — Conduct of hearing or examination.
- 390. Evidence supporting information or complaint; affidavits.
- 391. — In general.
- 392. — Necessity.
- 393. — Degree of proof; probable cause.
- 394. — Sufficiency of evidence or affidavit.
- 395. — Particular cases and offenses.
- 396. — Competency or legality of supporting evidence.
- 397. Conversion of complaint or other charging instrument to information.

II. FINDING OR FILING.(Cont'd)

- 398. — In general.
- 399. — Complaint as prerequisite for information.
- 400. — Competency or legality of supporting evidence.
- 401. — Sufficiency of complaint.
- 402. — Particular offenses.
- 403. Filing and record.
- 404. Loss or destruction.
- 405. Successive or superseding informations or complaints.
- 406. — In general.
- 407. — Relationship to original counts or charges.
- 408. — Particular occasions for recharging.
 - (1). In general.
 - (2). Dismissal of prior information or complaint.
 - (3). Violation of plea bargain.
 - (4). Mistrial.
 - (5). Appeal.
- 409. — Vindictiveness.
- 410. — Prejudice.
- 411. — Proceedings.
- 412. — Effect in general.
- 413. Information or complaint after indictment.

(D) TIME FOR FINDING OR FILING.

- 421. In general.
- 422. Term of grand jury.
- 423. Term of court.
- 424. Successive or superseding instruments.
- 425. Delay in finding or filing.
- 426. — In general.
- 427. — Discretion.
- 428. — Length of delay.
 - (1). In general.
 - (2). Time from commission of offense.
 - (3). Time from arrest.
- 429. — Cause of delay.
 - (1). In general.
 - (2). Intentional delay; tactical advantage.
 - (3). Investigation; obtaining witnesses or evidence.
- 430. — Prejudice.
 - (1). In general.

210. INDICTMENTS AND CHARGING INSTRUMENTS**II. FINDING OR FILING.**(Cont'd)

- (2). Confinement.
- (3). Loss of evidence or witnesses.
- 431. — Successive or superseding instruments.
- 432. — Proceedings.
 - (1). In general.
 - (2). Motion.
 - (3). Time for proceedings.
 - (4). Evidence.
 - (5). — In general.
 - (6). — Presumptions and burden of proof.
 - (7). — Admissibility.
 - (8). — Weight and sufficiency.
 - (9). Hearing.
 - (10). Findings.
 - (11). Relief.
- 433. Extension of time.

III. FORMAL REQUISITES.**(A) IN GENERAL.**

- 441. In general.

(B) INDICTMENT.

- 451. In general.
- 452. Caption or title.
- 453. — In general.
- 454. — Nature and purpose.
- 455. — Sufficiency in general.
- 456. — Description of court.
- 457. — Term of court.
- 458. — Description of grand jury.
- 459. — Title of case.
- 460. Commencement or introduction.
- 461. — In general.
- 462. — Venue.
- 463. — Presentment or accusation.
- 464. Conclusion.
- 465. — In general.
- 466. — Against peace and dignity.
- 467. — Against statute or law.
- 468. Signature and verification.
- 469. — In general.
- 470. — Prosecutor.
 - (1). In general.
 - (2). Assistant or deputy.
- 471. — Foreperson or other members of grand jury.

III. FORMAL REQUISITES.(Cont'd)

- 472. Indorsements.
- 473. — In general.
- 474. — True bill.
- 475. — Names of witnesses.

(C) INFORMATION OR COMPLAINT.

- 481. In general.
- 482. Caption or title.
- 483. Commencement or introduction.
- 484. Conclusion.
- 485. Signature.
- 486. — In general.
- 487. — Prosecutor.
- 488. — Assistant or deputy prosecutor.
- 489. Verification.
- 490. — In general.
- 491. — Necessity.
- 492. — Sufficiency.
 - (1). In general.
 - (2). Oath.
 - (3). Information and belief.
- 493. Indorsements.

IV. REQUISITES AND SUFFICIENCY OF ACCUSATION.**(A) IN GENERAL.**

- 501. In general.
- 502. Compliance with constitutional or statutory standards.
- 503. Facial sufficiency.
- 504. Strict compliance with rules of pleading.
- 505. Common sense or reasonable construction.
- 506. Practical or technical considerations.
- 507. Construction as a whole.
- 508. Presumptions as to construction.
- 509. Construction as question of law or fact.
- 510. Purpose of accusation.
- 511. — In general.
- 512. — Informing court of allegations.
- 513. — Informing defendant of nature of charge; notice.
- 514. — Enabling defendant to prepare for trial.
- 515. — Protection against subsequent prosecution.
- 516. Certainty, particularity, and directness in general.

210. INDICTMENTS AND CHARGING INSTRUMENTS**IV. REQUISITES AND SUFFICIENCY
OF ACCUSATION.(Cont'd)**

- 517. Statutory forms.
- 518. — In general.
- 519. — Short or simplified form.
- 520. Theory of case or liability.
- 521. Reasonable or probable cause; prima facie case.
- 522. Matters judicially noticed.
- 523. Matters implied.
- 524. Matters of fact or conclusions.
- 525. Matters of evidence.
- 526. Disjunctive or alternative allegations.
- 527. Language and form of allegations.
- 528. — In general.
- 529. — Particular terms.
- 530. — Technical terms.
- 531. — Abbreviations, numbers, and symbols.
- 532. — Omissions.
- 533. — Mistakes in spelling, grammar, or punctuation.
- 534. Aider by preliminary proceedings or warrant.
- 535. Effect of defects.

**(B) NATURE, ELEMENTS, AND INCIDENTS
OF OFFENSES IN GENERAL.**

- 541. In general.
- 542. Name or designation of offense.
- 543. Grade or degree of offense.
- 544. Intent; knowledge.
- 545. Act or omission constituting offense.
- 546. — In general.
- 547. — Manner or means.
- 548. Felonious or wrongful nature of act.
- 549. Defendant's role in offense; law of parties.
- 550. — In general.
- 551. — Accessories.
- 552. — Accomplices.
- 553. — Aiding and abetting.
- 554. Place of offense.
- 555. — In general.
- 556. — Federal offenses.
- 557. — Aider by reference.
- 558. Time of offense.
- 559. — In general.
- 560. — Prior to finding of indictment.
- 561. — Continuing offenses.

**IV. REQUISITES AND SUFFICIENCY
OF ACCUSATION.(Cont'd)**

- 562. — Effective date of offense statute.
- 563. Property involved in offense.
- 564. — In general.
- 565. — Real property.
- 566. — Personal property.
- 567. Documents involved in offense.
- 568. Statutory offenses.
- 569. — In general.
- 570. — Reference to statute.
- 571. — Elements and incidents of offense.
- 572. — Statutory language.
 - (1). In general.
 - (2). Necessity and sufficiency of using statutory language.
 - (3). Exceptions to rule.
- 573. Exceptions and provisos.
- 574. Attempts.
- 575. Solicitation.

(C) DESIGNATION OR DESCRIPTION OF PERSONS.

- 581. In general.
- 582. Defendants.
- 583. — In general.
- 584. — Particular cases and offenses.
- 585. — Initials in general.
- 586. — Middle names or initials.
- 587. — Fictitious names.
- 588. — Aliases; names by which generally known.
- 589. — Genetic information or profiles.
- 590. — Corporations and organizations.
- 591. Codefendants, accomplices, and coconspirators.
- 592. — In general.
- 593. — Particular cases and offenses.
- 594. Persons injured; victims.
- 595. — In general.
- 596. — Particular cases and offenses.
- 597. — Initials; fictitious names.

(D) ANTICIPATION OF DEFENSES.

- 601. In general.
- 602. Statute of limitations.
- 603. Other particular defenses.

(E) MULTIPLE COUNTS.

- 611. In general.

210. INDICTMENTS AND CHARGING INSTRUMENTS**IV. REQUISITES AND SUFFICIENCY
OF ACCUSATION.(Cont'd)**

- 612. Particular cases and offenses.
- 613. Reference from one count to another.
- 614. Effect of defect in one count on others.
- 615. Repugnancy; inconsistency.

(F) MATTERS NOT KNOWN TO GRAND JURY.

- 621. In general.
- 622. Particular cases and offenses.

V. BILL OF PARTICULARS.**(A) IN GENERAL.**

- 631. In general.
- 632. Discretion of court.
- 633. Nature and purpose; grounds.
- 634. — In general.
- 635. — Vagueness of charging instrument in general.
- 636. — Informing defendant of nature of charge; notice.
- 637. — Enabling defendant to prepare for trial.
- 638. — Protection against subsequent prosecution.
- 639. — Preventing surprise.
- 640. — Form of charging instrument.
- 641. — Relation to discovery.
- 642. Matters affecting right.
- 643. — In general.
- 644. — Availability of information from other sources.
- 645. — Prejudice to prosecution.
- 646. Scope and sufficiency of bill.
- 647. — In general.
- 648. — Evidentiary matters.
- 649. Waiver of right.

(B) PARTICULAR CASES AND OFFENSES.

- 651. In general.
- 652. Arson and malicious mischief.
- 653. Assault and battery.
- 654. Burglary and trespass.
- 655. Conspiracy, racketeering, and money laundering.
- 656. Controlled substances.
- 657. Counterfeiting and forgery.
- 658. Disorderly conduct and breach of the peace.

V. BILL OF PARTICULARS.(Cont'd)

- 659. Escape.
- 660. Extortion, threats, stalking, and harassment.
- 661. Fraud and false pretenses.
- 662. Gambling offenses.
- 663. Homicide.
- 664. Immigration offenses.
- 665. Kidnapping and false imprisonment.
- 666. Larceny, embezzlement, and receiving stolen property.
- 667. Liquor offenses.
- 668. Minors and endangered persons, offenses against.
- 669. Motor vehicle offenses.
- 670. Obscenity and lewdness.
- 671. Obstructing justice, bribery, and perjury.
- 672. Robbery.
- 673. Sex offenses, incest, and prostitution.
- 674. Tax and internal revenue offenses.
- 675. Weapons and explosives.
- 676. Other particular offenses.
- 677. Multiple offenses.

(C) PROCEEDINGS.

- 681. In general.
- 682. Time for proceedings.
- 683. Application or motion.
- 684. Presumptions and burden of proof.

(D) EFFECT OF BILL.

- 691. In general.
- 692. Validity of charging instrument.

VI. JOINDER.**(A) IN GENERAL.**

- 701. In general.

(B) DEFENDANTS.

- 711. In general.
- 712. Construction of rules; presumptions.
- 713. Extrinsic evidence.
- 714. Grounds.
- 715. — In general.
- 716. — Same transaction or series of transactions.
- 717. — Extent of participation; principals and accessories.

210. INDICTMENTS AND CHARGING INSTRUMENTS**(C) COUNTS.**

- 721. In general.
- 722. Construction of rules; presumptions.
- 723. Extrinsic evidence.
- 724. Grounds.
- 725. — In general.
- 726. — Judicial economy.
- 727. — Relationship between offenses.
 - (1). In general.
 - (2). Common scheme or plan.
 - (3). Same or similar character.
 - (4). Evidence admissible as to offenses.
- 728. Felonies and misdemeanors.
- 729. Duplicity.
- 730. — In general.
- 731. — Prejudice to defendant.
 - (1). In general.
 - (2). Right to unanimity.
- 732. — Continuing offense or scheme.
- 733. — Multiple modes or means of committing the same offense.
- 734. — Conjunctive allegations.
- 735. — Role in offense; principals and accessories.
- 736. Multiplicity.
- 737. — In general.
- 738. — Separate and distinct offenses.
- 739. — Proof of same elements or facts.
- 740. — Unit of prosecution.

(D) PARTICULAR CASES AND OFFENSES.

- 751. In general.
- 752. Arson and malicious mischief.
- 753. Assault and battery.
- 754. Burglary and trespass.
- 755. Conspiracy, racketeering, and money laundering.
- 756. Controlled substances.
- 757. Counterfeiting and forgery.
- 758. Disorderly conduct and breach of the peace.
- 759. Escape.
- 760. Extortion, threats, stalking, and harassment.
- 761. Fraud and false pretenses.
- 762. Gambling offenses.
- 763. Homicide.
- 764. Immigration offenses.

VI. JOINDER.(Cont'd)

- 765. Kidnapping and false imprisonment.
- 766. Larceny, embezzlement, and receiving stolen property.
- 767. Liquor offenses.
- 768. Minors and endangered persons, offenses against.
- 769. Motor vehicle offenses.
- 770. Obscenity and lewdness.
- 771. Obstructing justice, bribery, and perjury.
- 772. Robbery.
- 773. Sex offenses, incest, and prostitution.
- 774. Tax and internal revenue offenses.
- 775. Weapons and explosives.
- 776. Other particular offenses.
- 777. Multiple offenses.

(E) ELECTION.

- 781. In general.
- 782. Necessity of and right to election.
- 783. Discretion of court.
- 784. Duplicity.
- 785. Multiplicity.
- 786. Particular cases and offenses.
- 787. Proceedings.
- 788. — In general.
- 789. — Motion or application.
- 790. — Time for proceedings.
- 791. — Evidence.
- 792. — Hearing and determination.

VII. INCLUDED OFFENSES.

- 801. In general.
- 802. Necessity of charging lesser offense.
- 803. What constitutes lesser offense in general.
 - 804. — In general.
 - 805. — Legislative intent.
 - 806. — Necessarily included offenses.
 - 807. — Cognate offenses.
 - 808. — Elements test.
 - 809. — Lesser degree or grade of offense charged.
- 810. — Felonies and misdemeanors.
- 811. Particular cases and offenses.
- 812. — In general.
- 813. — Arson and malicious mischief.
- 814. — Assault and battery.
- 815. — Burglary and trespass.

210. INDICTMENTS AND CHARGING INSTRUMENTS**VII. INCLUDED OFFENSES.(Cont'd)**

- 816. — Conspiracy, racketeering, and money laundering.
- 817. — Controlled substances.
- 818. — Counterfeiting and forgery.
- 819. — Disorderly conduct and breach of the peace.
- 820. — Escape.
- 821. — Extortion, threats, stalking, and harassment.
- 822. — Fraud and false pretenses.
- 823. — Gambling offenses.
- 824. — Homicide.
- 825. — Immigration offenses.
- 826. — Kidnapping and false imprisonment.
- 827. — Larceny, embezzlement, and receiving stolen property.
- 828. — Liquor offenses.
- 829. — Minors and endangered persons, offenses against.
- 830. — Motor vehicle offenses.
- 831. — Obscenity and lewdness.
- 832. — Obstructing justice, bribery, and perjury.
- 833. — Robbery.
- 834. — Sex offenses, incest, and prostitution.
- 835. — Tax and internal revenue offenses.
- 836. — Weapons and explosives.
- 837. — Other particular offenses.
- 838. — Multiple offenses.

VIII. VARIANCE BETWEEN ALLEGATIONS AND PROOF.**(A) IN GENERAL.**

- 841. In general.
- 842. Right to be tried and convicted only on charges included in charging instrument.
- 843. Material variance.
- 844. Fatal variance.
- 845. Mode or means of committing offense.
- 846. Defendant's role in offense; law of parties.
- 847. Place of offense.
- 848. Time of offense.
- 849. Property involved in offense.
- 850. Scope of issues or evidence.

VIII. VARIANCE BETWEEN ALLEGATIONS AND PROOF.(Cont'd)

- 851. — In general.
- 852. — Surplusage and unnecessary allegations.
- 853. — Multiple means or acts.
- 854. — Evidence admissible under charging instrument.
- 855. — Charging instrument as evidence.

(B) DESIGNATION OR DESCRIPTION OF PERSONS.

- 861. In general.
- 862. Defendant.
- 863. — In general.
- 864. — Particular cases and offenses.
- 865. Codefendants, accomplices, and coconspirators.
- 866. — In general.
- 867. — Particular cases and offenses.
- 868. Persons injured; victims.
- 869. — In general.
- 870. — Particular cases and offenses.

(C) MATTERS NOT KNOWN TO GRAND JURY.

- 871. In general.
- 872. Particular cases and offenses.

(D) PRELIMINARY PROCEEDINGS AND ALLEGATIONS.

- 881. In general.
- 882. Particular cases and offenses.

(E) BILL OF PARTICULARS AND PROOF.

- 891. In general.
- 892. Particular cases and offenses.
- 893. Scope of issues or evidence.
- 894. — In general.
- 895. — Particular cases and offenses.

IX. OBJECTIONS.**(A) IN GENERAL.**

- 901. In general.
- 902. Grounds.
- 903. — In general.
- 904. — Finding of the grand jury.
- 905. — Formal requisites.
- 906. — Sufficiency of accusation.
- 907. — Joinder.
- 908. Proceedings.

210. INDICTMENTS AND CHARGING INSTRUMENTS**IX. OBJECTIONS.(Cont'd)**

- 909. — In general.
- 910. — Form and sufficiency.
- 911. — Time for proceedings.
- 912. — Evidence.
- 913. — Hearing.
- 914. — Determination and relief.

(B) STRIKING ALLEGATIONS; SURPLUSAGE.

- 921. In general.
- 922. Discretion of court.
- 923. What constitutes surplusage.
- 924. Prejudice.
- 925. Particular cases and offenses.
- 926. — In general.
- 927. — Arson and malicious mischief.
- 928. — Assault and battery.
- 929. — Burglary and trespass.
- 930. — Conspiracy, racketeering, and money laundering.
- 931. — Controlled substances.
- 932. — Counterfeiting and forgery.
- 933. — Disorderly conduct and breach of the peace.
- 934. — Escape.
- 935. — Extortion, threats, stalking, and harassment.
- 936. — Fraud and false pretenses.
- 937. — Gambling offenses.
- 938. — Homicide.
- 939. — Immigration offenses.
- 940. — Kidnapping and false imprisonment.
- 941. — Larceny, embezzlement, and receiving stolen property.
- 942. — Liquor offenses.
- 943. — Minors and endangered persons, offenses against.
- 944. — Motor vehicle offenses.
- 945. — Obscenity and lewdness.
- 946. — Obstructing justice, bribery, and perjury.
- 947. — Robbery.
- 948. — Sex offenses, incest, and prostitution.
- 949. — Tax and internal revenue offenses.
- 950. — Weapons and explosives.
- 951. — Other particular offenses.
- 952. — Multiple offenses.

IX. OBJECTIONS.(Cont'd)

- 953. Proceedings to strike.
- 954. — In general.
- 955. — Motion or application.
- 956. — Time for proceedings.
- 957. — Evidence.
- 958. — Hearing.
- 959. — Determination and relief.

(C) QUASHING OR SET ASIDE.

- 961. In general.
- 962. Discretion of court.
- 963. Grounds.
- 964. — In general.
- 965. — Matters appearing on face of charging instrument.
- 966. — Finding of the grand jury.
 - (1). In general.
 - (2). Composition and constitution of the grand jury.
 - (3). Prosecutorial misconduct.
 - (4). Evidence supporting indictment.
- 967. — Formal requisites.
- 968. — Sufficiency of accusation.
- 969. — Joinder.
- 970. — Defenses.
- 971. — Insufficiency of part of counts or allegations.
- 972. Proceedings to quash or set aside.
- 973. — In general.
- 974. — Motion or application.
- 975. — Time for proceedings.
- 976. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 977. — Hearing.
 - (1). In general.
 - (2). Necessity.
 - (3). Conduct of hearing.
 - (4). Findings.
- 978. — Determination and relief.

(D) DISMISSAL.

- 981. In general.
- 982. Discretion of court.
- 983. Grounds.

210. INDICTMENTS AND CHARGING INSTRUMENTS**IX. OBJECTIONS.(Cont'd)**

- 984. — In general.
 - 985. — Matters appearing on face of charging instrument.
 - 986. — Finding of the grand jury.
 - (1). In general.
 - (2). Composition and constitution of the grand jury.
 - (3). Prosecutorial misconduct.
 - (4). Evidence supporting indictment.
 - 987. — Formal requisites.
 - 988. — Sufficiency of accusation.
 - 989. — Joinder.
 - 990. — Defenses.
 - 991. — Insufficiency of part of counts or allegations.
 - 992. Proceedings to dismiss.
 - 993. — In general.
 - 994. — Motion or application.
 - 995. — Time for proceedings.
 - 996. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 997. — Hearing.
 - (1). In general.
 - (2). Necessity.
 - (3). Conduct of hearing.
 - (4). Findings.
 - 998. — Determination and relief.
- (E) DEMURRER.**
- 1001. In general.
 - 1002. General or special demurrer.
 - 1003. Grounds.
 - 1004. — In general.
 - 1005. — Matters appearing on face of charging instrument.
 - 1006. — Finding of the grand jury.
 - 1007. — Formal requisites.
 - 1008. — Sufficiency of accusation.
 - 1009. — Joinder.
 - 1010. — Defenses.
 - 1011. — Insufficiency of part of counts or allegations.
 - 1012. Proceedings on demurrer.
 - 1013. — In general.

IX. OBJECTIONS.(Cont'd)

- 1014. — Form and sufficiency.
- 1015. — Time for proceedings.
- 1016. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1017. — Hearing.
 - (1). In general.
 - (2). Necessity.
 - (3). Conduct of hearing.
 - (4). Findings.
- 1018. — Determination and relief.

X. AMENDMENT.**(A) IN GENERAL.**

- 1021. In general.
- 1022. Amendable defects.

(B) AMENDMENT OF INDICTMENT IN GENERAL.

- 1031. In general.
- 1032. Discretion of court.
- 1033. Province of grand jury.
- 1034. Matters of form.
- 1035. Matters of substance.
- 1036. Prejudice to defendant.
- 1037. Constructive amendment.
- 1038. — In general.
- 1039. — Amendment via instructions.
- 1040. — Amendment via argument of counsel.
- 1041. Time of offense.
- 1042. Place of offense.
- 1043. Designation or description of persons.
- 1044. Amendment to conform to proof.

(C) AMENDMENT OF INFORMATION OR COMPLAINT IN GENERAL.

- 1051. In general.
- 1052. Discretion of court.
- 1053. Matters of form.
- 1054. Matters of substance.
- 1055. Prejudice to defendant.
- 1056. Constructive amendment.
- 1057. Time of offense.
- 1058. Place of offense.

210. INDICTMENTS AND CHARGING INSTRUMENTS**X. AMENDMENT.**(Cont'd)

1059. Designation or description of persons.
1060. Amendment to conform to proof.

(D) PARTICULAR CASES AND OFFENSES.

1071. In general.
1072. Arson and malicious mischief.
1073. Assault and battery.
1074. Burglary and trespass.
1075. Conspiracy, racketeering, and money laundering.
1076. Controlled substances.
1077. Counterfeiting and forgery.
1078. Disorderly conduct and breach of the peace.
1079. Escape.
1080. Extortion, threats, stalking, and harassment.
1081. Fraud and false pretenses.
1082. Gambling offenses.
1083. Homicide.
1084. Immigration offenses.
1085. Kidnapping and false imprisonment.
1086. Larceny, embezzlement, and receiving stolen property.
1087. Liquor offenses.
1088. Minors and endangered persons, offenses against.
1089. Motor vehicle offenses.
1090. Obscenity and lewdness.
1091. Obstructing justice, bribery, and perjury.
1092. Robbery.
1093. Sex offenses, incest, and prostitution.
1094. Tax and internal revenue offenses.
1095. Weapons and explosives.
1096. Other particular offenses.
1097. Multiple offenses.
1098. Time of offense.
1099. Place of offense.
1100. Designation or description of persons.
1101. — In general.
1102. — Defendant.
1103. — Codefendants, accomplices, and coconspirators.
1104. — Persons injured; victims.

(E) PROCEEDINGS TO AMEND.

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X. AMENDMENT.(Cont'd)

1112. Proceedings to amend indictment.
1113. — In general.
1114. — Time for amending.
1115. Proceedings to amend information or complaint.
1116. — In general.
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1119. — Mode of amendment.

(F) AMENDMENT OF BILL OF PARTICULARS.

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1122. Particular cases and offenses.
1123. Proceedings to amend.

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1132. Indictment.
1133. Information or complaint.
1134. Bill of particulars.

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1142. Defects and objections which may be waived or cured.
1143. — In general.
1144. — Finding of grand jury.
1145. — Formal requisites.
1146. — Sufficiency of accusation.
 (1). In general.
 (2). Defects cured by instruction.
1147. — Bill of particulars.
1148. — Joinder.
1149. — Variance between allegations and proof.
1150. — Amendments.
1151. Form and sufficiency of waiver.
1152. — In general.
1153. — Motion to quash or set aside in general.
1154. — Motion to dismiss in general.
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1157. — Formal requisites.
1158. — Sufficiency of accusation.
1159. — Bill of particulars.
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XI. WAIVER OF DEFECTS AND
OBJECTIONS.(Cont'd)

- 1161. — Variance between allegations and proof.
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XII. AIDER BY VERDICT.

- 1171. In general.
- 1172. Defects cured.
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- 1174. — Finding of grand jury.
- 1175. — Formal requisites.
- 1176. — Sufficiency of accusation.
- 1177. — Joinder.
- 1178. Multiple counts.

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SUBJECTS INCLUDED

- Persons not of full age; children, minors, and juveniles
- Their status, rights, capacities, and disabilities
- Regulation and protection of their persons and property
- Legal proceedings affecting them
- Child and foster care providers
- Child protective agencies, employees, investigations, and proceedings
- Child abuse reporting and registries
- Protection orders involving children
- Crimes against children by nature or element, and prosecution and punishment thereof
- Termination of parental rights
- Juvenile delinquency and youthful offenders
- Transfers of juveniles to and from adult criminal court
- Rehabilitative institutions, facilities, and agencies
- Juvenile records

SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS

- Abortion and birth control, see ABORTION AND BIRTH CONTROL

- Adult liability for torts against children, see ASSAULT AND BATTERY, NEGLIGENCE, PARENT AND CHILD, PRODUCTS LIABILITY, TORTS, and other specific topics
- Asylums for orphans and indigent children, see ASYLUMS AND ASSISTED LIVING FACILITIES
- Automobile accidents, negligence and liabilities of children with respect to, see AUTOMOBILES
- Child custody, see CHILD CUSTODY
- Child support, see CHILD SUPPORT
- Children of unmarried parents, see PARENT AND CHILD I-III
- Contributory or comparative negligence of children, see NEGLIGENCE, AUTOMOBILES, and other specific topics
- Double jeopardy, see DOUBLE JEOPARDY
- Federal assistance to disabled children, see SOCIAL SECURITY
- Government assistance to needy and dependent children, see PUBLIC ASSISTANCE
- Guardianship of children, see GUARDIAN AND WARD
- Homestead rights, see HOMESTEAD
- Incest, see INCEST
- Infanticide, see HOMICIDE
- Inheritance by and from children in general, see DESCENT AND DISTRIBUTION
- Intoxicants, sale to children, see ALCOHOLIC BEVERAGES
- Limitation of actions, effect of child's disability, see LIMITATION OF ACTIONS
- Loss of consortium or society, see PARENT AND CHILD and DAMAGES
- Marriage of children, see MARRIAGE AND COHABITATION
- Native American children, matters peculiar to, see INDIANS
- Particular personal relations occupied by children, matters peculiar to, see PARENT AND CHILD, LABOR AND EMPLOYMENT, and other specific topics
- Remedies and procedure in habeas corpus, see HABEAS CORPUS
- Sale, possession, or dissemination of child pornography, see OBSCENITY and TELECOMMUNICATIONS
- Testamentary capacity, see WILLS
- Witnesses, children as, see WITNESSES

211. INFANTS

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- II. STATUS, CAPACITIES, AND DISABILITIES, ⚭1011–1050.
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 - (B) RIGHTS, CAPACITIES, AND DISABILITIES, ⚭1031–1050.
- III. CONTRACTS, ⚭1051–1090.
- IV. PROPERTY AND ESTATE, ⚭1091–1190.
 - (A) ESTATE IN GENERAL, ⚭1091–1120.
 - (B) REAL PROPERTY TRANSACTIONS; ENCUMBRANCES, ⚭1121–1160.
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- V. TORTS, ⚭1191–1210.
- VI. COMPROMISE, SETTLEMENT, AND RELEASE, ⚭1211–1230.
- VII. ACTIONS, ⚭1231–1380.
 - (A) ROLE OF REPRESENTATIVE OR COUNSEL, ⚭1231–1270.
 - (B) COURSE OF PROCEEDINGS, ⚭1271–1330.
 - (C) EVIDENCE, ⚭1331–1350.
 - (D) APPEAL AND REVIEW, ⚭1351–1380.
- VIII. CHILD CARE, ⚭1381–1410.
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 - (B) AGENCIES AND PROCEEDINGS, ⚭1421–1480.
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 - (D) CHILD LABOR, ⚭1491–1500.
- X. CHILD ABUSE REPORTING, ⚭1501–1530.
- XI. ORDERS FOR PROTECTION OF CHILDREN, ⚭1531–1540.
- XII. CRIMINAL ACTS AGAINST CHILDREN, ⚭1541–1770.
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1004. — In general.

1005. — Purpose, construction, and inter-
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1006. — Validity.

I. IN GENERAL.(Cont'd)

(1). In general.

(2). Child hearsay.

(3). Contracts.

(4). Property and estate.

(5). Gifts and trusts.

(6). Torts.

(7). Child protection in general.

(8). Child labor.

(9). Child abuse reporting.

(10). Protection orders.

(11). Child and foster care.

(12). Crimes against children.

(13). Dependent children.

(14). Juvenile justice in general.

(15). Prohibited hours and premises;
 curfew.(16). Juvenile transfers and certifica-
 tions; adult prosecution.(17). Juvenile sex offenders; registra-
 tion and notification.

(18). Records.

1007. — Time of application to cause or
 occurrence; retroactivity.

(1). In general.

(2). Child hearsay.

(3). Contracts.

(4). Property and estate.

(5). Gifts and trusts.

(6). Torts.

(7). Child protection in general.

(8). Child labor.

(9). Child abuse reporting.

(10). Protection orders.

(11). Child and foster care.

(12). Crimes against children.

(13). Dependent children.

(14). Juvenile justice in general.

(15). Prohibited hours and premises;
 curfew.(16). Juvenile transfers and certifica-
 tions; adult prosecution.(17). Juvenile sex offenders; registra-
 tion and notification.

(18). Records.

II. STATUS, CAPACITIES, AND DISABILITIES.**(A) IN GENERAL.**

1011. In general.

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- 1012. Interest, role, and authority of government in general.
- 1013. — In general.
- 1014. — Parens patriae.
- 1015. Role, power, and authority of courts in general.
- 1016. — In general.
- 1017. — Equity or statute.
- 1018. — Parens patriae.
- 1019. Status in general; commencement and duration.
- 1020. — In general.
- 1021. — Unborn children.
- 1022. Child as ward of court.
- 1023. Connection with state; location, residency, or domicile.
- 1024. Estoppel to allege infancy.

(B) RIGHTS, CAPACITIES, AND DISABILITIES.

Other particular capacities and disabilities, see later sections.

- 1031. In general.
 - 1032. Nature of right, capacity, or disability in general.
 - 1033. Eligibility for office or public employment or service.
- Supermajority and other eligibility issues as to public office, see PUBLIC EMPLOYMENT.*
- 1034. Capacity to appoint agent, trustee, or attorney.
 - 1035. Capacity to act as agent or trustee.
 - 1036. Removal of disabilities.
 - 1037. — In general.
 - 1038. — Effect of majority or emancipation.

See also CHILD SUPPORT and PARENT AND CHILD.

- 1039. — Effect of marriage.
- 1040. Estoppel or waiver as to right, capacity, or disability.

III. CONTRACTS.

Contracts as to real property, see IV(B).

- 1051. In general.
- 1052. Capacity to contract in general.
- 1053. Effect of majority, emancipation, or marriage in general.
- 1054. Requisites, validity, operation, and effect of contracts.

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III. CONTRACTS.(Cont'd)

- 1055. — In general.
- 1056. — Ratification and affirmance.
- 1057. — Avoidance and disaffirmance.
- 1058. — Time for ratification or avoidance; lapse of time.
- 1059. — Persons entitled to ratify or avoid.
- 1060. — Effect of performance; executory contracts.
- 1061. — Retention or return of consideration.
- 1062. Contracts by agent or representative.
- 1063. Necessaries.
- 1064. Goods, property, and merchandise.
- 1065. — In general.
- 1066. — Bailment or lease.
- 1067. Employment and services.
- 1068. — In general.
- 1069. — Actors and celebrities.
- 1070. — Employment or services of another.
- 1071. Carriage of person or property.
- 1072. Insurance, bonds, and recognizances.
- 1073. Student and educational contracts.
- 1074. Financial institutions, accounts, and deposits.
- 1075. Loans and chattel mortgages.
- 1076. Bills and notes.
- 1077. Business transactions, forms, and relationships.
- 1078. Investments or securities.
- 1079. Alternative dispute resolution; arbitration.
- 1080. Marital and domestic relations.
- 1081. Other particular contracts.
- 1082. Confirmation or approval by court.
- 1083. False representations as to age.

IV. PROPERTY AND ESTATE.**(A) ESTATE IN GENERAL.**

- 1091. In general.
- 1092. Role, power, and authority of courts in general.
- 1093. — In general.
- 1094. — Particular property transactions.
- 1095. — Gifts and trusts.
- 1096. Capacity as to property or estate in general.

211. INFANTS**IV. PROPERTY AND ESTATE.**(Cont'd)

- 1097. Nature and scope of estate or property in general.
- 1098. Control, management, and use of estate or property.
- 1099. Disposition, confirmation, or approval by court.
- 1100. Location of estate or property; extra-territorial jurisdiction.
- 1101. Change of form or character.
- 1102. Claims against estate or property.
- 1103. — In general.
- 1104. — Rights of creditors.
- 1105. — Compensation for services rendered; attorney fees.
- 1106. Appointment of receiver.
- 1107. Adverse possession.
- 1108. Effect of majority, emancipation, or marriage.

(B) REAL PROPERTY TRANSACTIONS; ENCUMBRANCES.

Contracts as to personal property, see III.

- 1121. In general.
- 1122. Capacity to purchase, convey, lease, or improve.
- 1123. Capacity to encumber.
- 1124. Requisites, validity, operation, and effect.
- 1125. — In general.
- 1126. — Particular transactions.
- 1127. — Ratification and affirmance.
- 1128. — Avoidance and disaffirmance.
- 1129. — Time for ratification or avoidance; lapse of time.
- 1130. — Retention or return of property or consideration.
- 1131. Married infants; effect of marriage.
- 1132. Effect of subsequent conveyance; rights of creditors and other third parties.
- 1133. Sale and conveyance under statutory authority.
- 1134. Disposition under order of court.
- 1135. — In general.
- 1136. — Grounds and considerations.
- 1137. — Requisites of sale or conveyance.
- 1138. — Price, consideration, and appraisal.
- 1139. — Proceedings.

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- 1140. — Nature, scope, and effect of interest conveyed.
- 1141. — Vacatur or collateral attack.
- 1142. — Rights of purchasers.
- 1143. — Deeds, title, and warranties.
- 1144. — Mortgage or encumbrance.
- 1145. — Lease.
- 1146. Disposition of proceeds; accounting.
- 1147. Confirmation or approval by court.
- 1148. False representations as to age.

(C) GIFTS AND TRUSTS.

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- 1161. In general.
- 1162. Nature or purpose.
- 1163. Capacity.
- 1164. Requisites and validity.
- 1165. — In general.
- 1166. — Particular gifts or trusts.
- 1167. Effect of transfer.
- 1168. Revocation and modification; vesting.
- 1169. Custodian or trustee.
- 1170. — In general.
- 1171. — Eligibility and qualifications; bond.
- 1172. — Resignation, removal, and successorship.
- 1173. — Status and authority.
- 1174. — Duties, responsibilities, and breach.
- 1175. Control, management, and use of property.
- 1176. Sale under order of court.
- 1177. Accounts and deposits.
- 1178. Accounting and settlement; damages.
- 1179. Termination of custodianship or trust; effect of majority.
- 1180. Ratification.
- 1181. Avoidance.
- 1182. Rights of creditors.

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- 1191. In general.
- 1192. Capacity to commit, and disability of infancy.
- 1193. Age as factor or limit.
- 1194. Nature, scope, and extent of liability and defenses thereto.

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- 1195. Duty, degree, and standard of care.
- 1196. Intent, state of mind, and willful injury.
- 1197. Negligent conduct.
Child's contributory or comparative negligence and capacity therefor, see NEGLIGENCE.
- 1198. Torts in connection with contract.
- 1199. Trespass, conversion, and civil theft.
- 1200. False representations and fraud.
- 1201. Torts by, through, or as agent or representative.
- 1202. Torts between siblings.

VI. COMPROMISE, SETTLEMENT, AND RELEASE.

Settlement of minor's claims by parent, see PARENT AND CHILD §290. *Settlement of minor's claims by general guardian, see GUARDIAN AND WARD* §33.

- 1211. In general.
- 1212. Role, power, or authority of representative.
- 1213. — In general.
- 1214. — Guardian ad litem or next friend.
- 1215. — Counsel.
- 1216. Confirmation or approval by court.
- 1217. Particular actions or claims.
- 1218. Construction, operation, and effect.
- 1219. Revocation, vacation, or setting aside.
- 1220. Ratification or avoidance.
- 1221. Supervision of proceeds.

VII. ACTIONS.**(A) ROLE OF REPRESENTATIVE OR COUNSEL.**

- 1231. In general.
- 1232. Persons acting on behalf of child in general.
- 1233. Role of parent in general.
- 1234. Guardian ad litem or next friend.
- 1235. — In general.
- 1236. — Nature or status.
- 1237. — Appointment in general.
 - (1). In general.
 - (2). Authority and discretion of court.
 - (3). Purpose, grounds, and necessity.
 - (4). Effect of age, majority, or maturity.
 - (5). Effect of appointment and failure to procure.
- 1238. — Necessity and grounds in particular actions or proceedings.

VII. ACTIONS.(Cont'd)

- (1). In general.
- (2). Contracts.
- (3). Estate and property transactions.
- (4). Probate and trusts.
- (5). Partition proceedings.
- (6). Foreclosure proceedings.
- (7). Guardianship proceedings.
- (8). Adoption proceedings.
- (9). Domestic relations and parentage.
- (10). Protection orders as to adults and children.
- 1239. — Time for appointment.
- 1240. — Proceedings for appointment.
 - (1). In general.
 - (2). Process as prerequisite to appointment.
 - (3). Evidence.
- 1241. — Eligibility and qualifications in general; bond.
- 1242. — Conflict of interest.
- 1243. — Resignation, removal, and successorship.
- 1244. — Compensation and expenses.
- 1245. — Rights and powers.
- 1246. — Duties, responsibilities, and liabilities.
 - (1). In general.
 - (2). Misconduct, misfeasance, or breach of fiduciary duty.
- 1247. — Liabilities on bonds.
- 1248. Appearance and representation by counsel.
- 1249. — In general.
- 1250. — Persons acting on behalf of child in general; dual role.
- 1251. — Nature of proceeding.
- 1252. — Nature of court.
- 1253. — On appeal or review.
- 1254. — Contracts.
- 1255. — Estate and property transactions.
- 1256. — Tortious injury.
- 1257. — Civil rights.
- 1258. — Schools and education.
- 1259. — Domestic relations proceedings.
- (B) COURSE OF PROCEEDINGS.**
- 1271. In general.

211. INFANTS**VII. ACTIONS.(Cont'd)**

- 1272. Role, power, and authority of court; discretion.
- 1273. Right or capacity to sue and be sued.
- 1274. Joinder and severance of causes or proceedings.
- 1275. Time for pleading, proceedings, or ruling.
- 1276. Jurisdiction and venue.
- 1277. Right of action; standing.
Parent's right of recovery for injuries to child, see PARENT AND CHILD. Loss of consortium between parent and child, see PARENT AND CHILD.
- 1278. — In general.
- 1279. — Representatives.
- 1280. — Contracts.
- 1281. — Estate and property transactions.
- 1282. — Gifts and trusts.
- 1283. — Public authorities, officers, and agencies.
- 1284. — Unborn children.
- 1285. — Tortious and personal injuries to child.
 - (1). In general.
 - (2). Public authorities, officers, and agencies.
 - (3). Assault, battery, and sexual abuse.
 - (4). Products liability.
 - (5). Motor vehicle accidents.
 - (6). Medical malpractice.
 - (7). Injuries prior to birth; wrongful life.
- 1286. Notice and process.
- 1287. Parties.
- 1288. — In general.
- 1289. — Joinder or intervention.
- 1290. Attainment of majority pending action.
- 1291. Pleading.
- 1292. — In general.
- 1293. — Defense of infancy.
- 1294. — Failure to plead infancy.
- 1295. — Effect of admissions as against child.
- 1296. Discovery and disclosure; depositions.
- 1297. Dismissal and nonsuit.
- 1298. Trial or hearing.
- 1299. Reception of evidence.
- 1300. Interview, or in camera examination, of child.
- 1301. Questions of fact or law.

VII. ACTIONS.(Cont'd)

- 1302. Instructions.
- 1303. Determination and findings.
- 1304. New trial and rehearing.
- 1305. Judgment or order.
- 1306. — In general.
- 1307. — On consent, offer, or admission.
- 1308. — By default.
- 1309. — Amendment, correction, or modification.
- 1310. — Opening and vacating.
 - (1). In general.
 - (2). After attaining majority.
- 1311. — Collateral attack.
- 1312. — Construction, operation, and effect.
- 1313. — Res judicata and conclusiveness.
- 1314. Reservation to child of day in court.
- 1315. Damages or other remedy.
- 1316. Execution and enforcement of judgment.
- 1317. Costs and fees.
- 1318. — In general.
- 1319. — Attorney fees.
- 1320. — Stage or condition of cause.

(C) EVIDENCE.

- 1331. In general.
- 1332. Application of rules of evidence in general.
- 1333. Presumptions, inferences, and burden of proof.
- 1334. — In general.
- 1335. — Contracts.
- 1336. — Estate and property transactions.
- 1337. — Gifts and trusts.
- 1338. — Torts.
- 1339. Admissibility.
- 1340. Degree of proof.
- 1341. Weight and sufficiency.
- 1342. Proof of infancy.

(D) APPEAL AND REVIEW.

- 1351. In general.
- 1352. Decisions reviewable.
- 1353. Right of review and parties.
- 1354. Effect of attainment of age of majority.
- 1355. Preservation of grounds for review.
- 1356. Perfection; notice and effect of appeal.

211. INFANTS**VII. ACTIONS.**(Cont'd)

- 1357. Record.
- 1358. Briefs and assignments of error.
- 1359. Proceedings in forma pauperis.
- 1360. Dismissal and mootness.
- 1361. Hearing and rehearing.
- 1362. Scope, standards, and questions on review.
- 1363. Trial or review de novo.
- 1364. Parties entitled to allege error; estoppel.
- 1365. Presumptions, inferences, and burden of proof.
- 1366. Discretion of lower court.
- 1367. Questions of fact and findings.
- 1368. Harmless or prejudicial error.
- 1369. Determination and remand.

VIII. CHILD CARE.

- 1381. In general.
- 1382. License, registration, and certification; inspection.
- 1383. — In general.
- 1384. — Camps.
- 1385. — Renewal and revocation.
- 1386. Bonds, administrative fees, and insurance.
- 1387. Contracts.
- 1388. Admission; records and immunizations.
- 1389. Rates and charges.
- 1390. Providers and staff.
- 1391. — In general.
- 1392. — Eligibility and qualifications.
- 1393. — Background checks.
- 1394. Duties, responsibilities, and liabilities.
- 1395. — In general.
- 1396. — Care of child; needs and conditions.
- 1397. — Injury to child.
- 1398. — Deprivation, neglect, or abuse.
- 1399. — Control or supervision.
- 1400. Special needs children.
- 1401. Authority, duties, and liabilities of supervising agency; immunity.
- 1402. Administrative proceedings and review.
- 1403. Judicial review and relief; actions and proceedings.
- 1404. Penalties.

VIII. CHILD CARE.(Cont'd)

- 1405. Public stipends and subsidies.
- 1406. Informal arrangements; babysitters.
Persons in loco parentis, see PARENT AND CHILD VII. Duty of care toward children more generally, see NEGLIGENCE *§*216, 237, 256.

IX. CHILD PROTECTION.

Orders for protection, see XI.

(A) IN GENERAL.

- 1411. In general.
- 1412. Interest, role, and authority of government in general.
- 1413. Role, power, and authority of courts in general.
- 1414. Welfare and best interest of child in general.
- 1415. Connection with state; location, residency, or domicile.

(B) AGENCIES AND PROCEEDINGS.

- 1421. In general.
- 1422. Creation and establishment.
- 1423. Public contracts and financing.
- 1424. Private agencies; religious affiliation.
Inclusive as to this subdivision.
- 1425. Officers and employees.
- 1426. — In general.
- 1427. — Hiring or appointment.
- 1428. — Eligibility and qualifications.
- 1429. — Compensation and benefits.
- 1430. — Tenure, discipline, and discharge.
- 1431. — Working conditions and case-loads.
- 1432. — Speech, whistleblowing, and retaliation.
- 1433. Authority and powers in general.
- 1434. Particular powers, duties, and liabilities.
As to child care, see *§*1401. *As to foster care, see* *§*1790.
- 1435. — In general.
- 1436. — Duty and failure to protect.
- 1437. — Investigations, inspections, and entry therefor.
- 1438. — Home studies and visits.
- 1439. — Child abuse reports and investigations.
Duties of others to make reports to agencies, see X.
- 1440. — Failure to investigate or act.
- 1441. — Protective custody and removal of child.

211. INFANTS**IX. CHILD PROTECTION.(Cont'd)**

- 1442. — Physical and mental examinations.
- 1443. — Placement or disposition of child.
- 1444. — Reunification plans and conditions.
- 1445. — Services and treatment.
- 1446. — Special needs children.
- 1447. — Retaliation claims.
- 1448. — Immunity.
- 1449. — Offenses by officer or agency.
- 1450. Actions by or against agency.
- 1451. — In general.
- 1452. — Right of action, parties, and standing.
- 1453. — Time for motion, proceedings, or ruling.
- 1454. — Jurisdiction and venue.
- 1455. — Pleading, notice, and process.
- 1456. — Discovery and disclosure.
- 1457. — Evidence.
- 1458. — Hearing; counsel.
- 1459. — Determination and findings.
- 1460. — Judgment, remedies, and relief.
- 1461. Administrative proceedings and review thereof.
- 1462. — In general.
- 1463. — Pleading, notice, and process.
- 1464. — Evidence; plea or admission.
- 1465. — Hearing; counsel.
- 1466. — Determination and findings in general.
- 1467. — Indicated or substantiated findings and reports.
 - (1). In general.
 - (2). Particular conduct.
- 1468. — Registry, index, or list.
- 1469. — Effect of listing.
- 1470. — Special needs children.
- 1471. — Safeguards and protections against error.
- 1472. — Administrative review.
- 1473. — Judicial review, relief, and proceedings.

(C) HEALTH, SAFETY, AND MORALS.

Regulation of child's education, see EDUCATION.

- 1481. In general.
- 1482. Products harmful to children.

Consumer product safety, see ANTITRUST AND TRADE REGULATION. Regulation of drugs and narcotics, see CONTROLLED SUBSTANCES. Regulation of intoxicating liquors and sales to minors, see ALCOHOLIC BEVERAGES.

- 1483. — In general.
- 1484. — Tobacco products.
- 1485. Tattoos and piercings.
- 1486. Visual, textual, and other depictions harmful to children.

(D) CHILD LABOR.

- 1491. In general.
- 1492. Dangerous or hazardous employment in general.
- 1493. Particular kinds or conditions of employment.
- 1494. Wages and hours.

Regulation of wages and hours under the Fair Labor Standards Act and similar employment laws of general application, see LABOR AND EMPLOYMENT XIII.

X. CHILD ABUSE REPORTING.

Criminal liability for failure to report, see §1565.

- 1501. In general.
- 1502. Persons obligated to report in general.
- 1503. Requisites and responsibilities as to reporting; form and information.
- 1504. Conduct subject to duty to report in general.
- 1505. Time for reporting; delay in general.
- 1506. Persons liable; immunity in general.
- 1507. Particular reporters.
- 1508. — In general.
- 1509. — Public authorities and agencies in general.
- 1510. — Medical institutions and professionals in general.
- 1511. — Mental health professionals.
- 1512. — School authorities and staff.
- 1513. — Child care and child care workers.
- 1514. — Religious authorities and personnel.
- 1515. False reports and accusations.
- 1516. Actions and proceedings.
- 1517. — In general.
- 1518. — Right of action, parties, and standing.
- 1519. — Evidence.

211. INFANTS**XI. ORDERS FOR PROTECTION
OF CHILDREN.**

Orders for protection between adults, see PROTECTION OF ENDANGERED PERSONS.

- 1531. In general.
- 1532. Elements, grounds, and defenses.
- 1533. Proceedings and jurisdiction.
- 1534. Relief granted; extension and modification.
- 1535. Violations, contempt, and conviction.
- 1536. Appeal and review.

XII. CRIMINAL ACTS AGAINST CHILDREN.**(A) IN GENERAL.**

- 1541. In general.
- 1542. Intent or scienter; strict liability.
- 1543. Time of offense; repetition and duration.
- 1544. Age; knowledge or belief as to.
- 1545. Status as to child; position of authority or trust.

**(B) PARTICULAR CRIMES AND
DEFENSES THERETO.**

- 1551. In general.
- 1552. Products harmful to children.
Sale or provision of intoxicating liquors to minors, see ALCOHOLIC BEVERAGES.
- 1553. — In general.
- 1554. — Tobacco products.
- 1555. Tattoos and piercings.
- 1556. Child abuse, neglect, or endangerment.
- 1557. Vehicular operation.
- 1558. Deprivation of services.
- 1559. Assault, battery, and physical abuse.
- 1560. Injury to child and risk thereof; intervening cause.
- 1561. Corporal punishment and discipline.
- 1562. Cruelty to children; child torture.
- 1563. Child abuse resulting in death.
- 1564. Failure to aid, protect, or prevent; passive abuse.
- 1565. Failure to report abuse.
- 1566. Contributing to delinquency.
- 1567. — In general.
- 1568. — Furnishing or facilitating as to liquor or narcotics.
- 1569. Prohibited premises.

(C) SEX OFFENSES.

See also SEX OFFENSES.

**XII. CRIMINAL ACTS AGAINST
CHILDREN.(Cont'd)**

- 1581. In general.
- 1582. Molestation and exploitation in general.
- 1583. Indecency and indecent liberties in general.
- 1584. Enticement, luring, and inducement in general.
Child abduction, see KIDNAPPING.
- 1585. Exposure of child to indecent material or sexual act.
- 1586. Sale or dissemination of indecent materials to children.
- 1587. Exhibition or use of child in indecent material or performance.
- 1588. Child prostitution.
- 1589. — In general.
- 1590. — Promoting, pimping, and pandering.
- 1591. Communication or solicitation for immoral purposes.
- 1592. Travel and transportation for immoral purposes.
- 1593. Sexual acts upon or with in general.
- 1594. Indecent contact, touching, or assault in general.
- 1595. Carnal knowledge; penetration.
- 1596. — In general.
- 1597. — Vaginal intercourse and rape.
- 1598. — Oral or anal copulation; sodomy.
- 1599. Sexual acts between children.

(D) PERSONS LIABLE.

- 1611. In general.
- 1612. Status as to child; position of authority or trust.
- 1613. Aiding and abetting; accomplices.

**(E) PROSECUTION ISSUES PARTICULAR
TO OFFENSES AGAINST CHILDREN.**

Criminal prosecutions in general, see CRIMINAL LAW; INDICTMENTS AND CHARGING INSTRUMENTS, SENTENCING AND PUNISHMENT, and other topics.

1. IN GENERAL.

- 1621. In general.
- 1622. Indictment and information.
- 1623. — In general.
- 1624. — Child abuse, neglect, endangerment, or cruelty.
- 1625. — Contributing to delinquency.

211. INFANTS**XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)**

- 1626. — Issues, proof, and variance.
- 1627. Trial or hearing.
- 1628. — In general.
- 1629. — Guardian ad litem or next friend for child.
- 1630. — Counsel for child.
- 1631. — Interview or hearing as to child evidence or testimony.
- 1632. — Questions of fact or law.
 - (1). In general.
 - (2). Child abuse, neglect, endangerment, or cruelty.
 - (3). Contributing to delinquency.
- 1633. — Instructions.
 - (1). In general.
 - (2). Child abuse, neglect, endangerment, or cruelty.
 - (3). Contributing to delinquency.
- 1634. — Determination and findings.
- 1635. Sentence and punishment.
- 1636. — In general.
- 1637. — Child abuse, neglect, endangerment, or cruelty.
- 1638. — Contributing to delinquency.

2. SEX OFFENSE PROSECUTIONS.*See also SEX OFFENSES.*

- 1651. In general.
- 1652. Indictment and information.
- 1653. — In general.
- 1654. — Molestation and exploitation in general; indecent liberties.
- 1655. — Indecent materials in general.
- 1656. — Indecent exhibition or use of child; child prostitution.
- 1657. — Indecent contact in general.
- 1658. — Carnal knowledge; rape and sodomy.
- 1659. — Issues, proof, and variance.
- 1660. Trial or hearing.
- 1661. — In general.
- 1662. — Guardian ad litem or next friend for child.
- 1663. — Counsel for child.
- 1664. — Interview or hearing as to child evidence or testimony.
- 1665. — Questions of fact or law.
 - (1). In general.

XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

- (2). Molestation and exploitation in general; indecent liberties.
- (3). Indecent materials in general.
- (4). Indecent exhibition or use of child; child prostitution.
- (5). Indecent contact in general.
- (6). Carnal knowledge; rape and sodomy.
- 1666. — Instructions.
 - (1). In general.
 - (2). Molestation and exploitation in general; indecent liberties.
 - (3). Indecent materials in general.
 - (4). Indecent exhibition or use of child; child prostitution.
 - (5). Indecent contact in general.
 - (6). Carnal knowledge; rape and sodomy.
 - (7). Intent or scienter; strict liability in general.
 - (8). Age and belief thereto.
 - (9). Time of offense; repetition and duration.
- 1667. — Determination and findings.
- 1668. Sentence and punishment.
- 1669. — In general.
- 1670. — Molestation and exploitation in general; indecent liberties.
- 1671. — Indecent materials in general.
- 1672. — Indecent exhibition or use of child; child prostitution.
- 1673. — Indecent contact in general.
- 1674. — Carnal knowledge; rape and sodomy.

(F) EVIDENCE ISSUES PARTICULAR TO OFFENSES AGAINST CHILDREN.**1. IN GENERAL.**

- 1681. In general.
- 1682. Presumptions, inferences, and burden of proof.
- 1683. — In general.
- 1684. — Age and knowledge thereof in general.
- 1685. — Harm, injury, or damage, and causation thereof.
- 1686. — Intent, state of mind, and motive.
- 1687. — Person responsible for injury.

211. INFANTS**XII. CRIMINAL ACTS AGAINST
CHILDREN.(Cont'd)**

- 1688. — Child testimony in general; credibility.
- 1689. — Child hearsay and statements.
- 1690. — Sentence or punishment.
- 1691. Admissibility.
- 1692. — In general.
- 1693. — Age and age differences in general.
- 1694. — Conduct, circumstances, and character of defendant.
- 1695. — Conduct, circumstances, and character of child.
- 1696. — Corroboration in general.
- 1697. — Declarations, admissions, and statements by child.
 - (1). In general.
 - (2). Child hearsay in general; procedure for admission.
 - (3). Unavailability to testify.
 - (4). Hearsay exceptions; trustworthiness and reliability.
 - (5). Necessity and sufficiency of corroboration.
- 1698. — Failure or delay in complaining in general.
- 1699. — Nonverbal communication; dolls, gestures, and illustrations.
- 1700. — False statements and recantations by child.
- 1701. Weight and sufficiency.
- 1702. — In general.
- 1703. — Credibility in general; child testimony.
- 1704. — Circumstantial evidence in general.
- 1705. — Particular crimes against children.
 - (1). In general.
 - (2). Child neglect or endangerment in general.
 - (3). Vehicular operation.
 - (4). Physical abuse and cruelty.
 - (5). Contributing to delinquency in general.
- 1706. — Aiding and abetting in general; accomplice liability.
- 1707. — Intent, state of mind, and motive.
- 1708. — Identification and identity.

**XII. CRIMINAL ACTS AGAINST
CHILDREN.(Cont'd)**

- 1709. — Corroboration in general; necessity and sufficiency.
 - (1). In general.
 - (2). Child statements and testimony.
 - (3). Accomplice testimony.
- 1710. — Necessity of expert testimony.

2. SEX OFFENSES.*See also SEX OFFENSES.*

- 1721. In general.
- 1722. Presumptions, inferences, and burden of proof.
- 1723. — In general.
- 1724. — Age and knowledge thereof in general.
- 1725. — Capacity and maturity of child in general.
- 1726. — Sexual innocence, naivete, or experience.
- 1727. — Consent.
- 1728. — Intent, state of mind, and motive.
- 1729. — Interstate nature, commerce, and travel.
- 1730. — Child hearsay and statements.
- 1731. — Sentence or punishment.
- 1732. Admissibility.
- 1733. — In general.
- 1734. — Age and age differences in general.
- 1735. — Capacity and maturity of child in general.
- 1736. — Conduct, circumstances, and character of defendant.
- 1737. — Conduct, circumstances, and character of child.
 - (1). In general.
 - (2). Prior sexual history, experience, or abuse; rape shield.
- 1738. — Consent of child.
- 1739. — Corroboration in general.
- 1740. — Declarations, admissions, and statements by child.
 - (1). In general.
 - (2). Child hearsay in general; procedure for admission.
 - (3). Unavailability to testify.
 - (4). Interviews and summaries.
 - (5). Other hearsay exceptions; trustworthiness and reliability.

211. INFANTS**XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)**

- (6). Complaint; outcry.
- (7). Accusations against third parties.
- (8). Necessity and sufficiency of corroboration.
- 1741. — Failure or delay in complaining.
- 1742. — Nonverbal communication; dolls, gestures, and illustrations.
- 1743. — False statements and recantations by child.
- 1744. Weight and sufficiency.
- 1745. — In general.
- 1746. — Molestation and exploitation in general; indecent liberties.
- 1747. — Exposure to indecent materials or sexual act.
- 1748. — Indecent exhibition or use of child; child prostitution.
- 1749. — Indecent contact in general.
- 1750. — Carnal knowledge; rape and sodomy.
- 1751. — Intent, state of mind, and motive.
- 1752. — Identification and identity.
- 1753. — Corroboration; necessity and sufficiency.
 - (1). In general.
 - (2). Child statements and testimony.
 - (3). Accomplice testimony.
- 1754. — Time and place of offense; repetition and duration.
- 1755. — Age; knowledge or belief as to.
- 1756. — Status as to child; position of authority or trust.
- 1757. — Necessity of expert testimony.

XIII. FOSTER CARE.

Placement with foster parents as disposition in dependency or termination proceeding, see Ⓔ2235.

- 1771. In general.
- 1772. License, registration, and certification.
- 1773. Bonds, administrative fees, and insurance.
- 1774. Contracts; termination.
- 1775. Nature, expectations, and purpose of relation.
- 1776. Acceptance, custody, and removal of child.
- 1777. Rates, charges, and compensation.
- 1778. Providers and staff.

XIII. FOSTER CARE.(Cont'd)

- 1779. — In general.
- 1780. — Eligibility and qualifications.
- 1781. — Background checks.
- 1782. Particular powers, duties, and liabilities of providers; immunity.
- 1783. — In general.
- 1784. — Care of child; needs and conditions.
- 1785. — Injury to child.
- 1786. — Deprivation, neglect, or abuse.
- 1787. — Control or supervision of child; third party injury.
- 1788. — Parental rights; visitation.
- 1789. Special needs children.
- 1790. Authority, duties, and liabilities of supervising agency; immunity.
- 1791. — In general.
- 1792. — Investigations, inspections, and examinations.
- 1793. — Care of child; services and treatment.
- 1794. — Injury to child.
- 1795. — Deprivation, neglect, or abuse.
- 1796. — Control or supervision of child; third party injury.
- 1797. Administrative proceedings and review.
- 1798. Judicial review, relief, and proceedings.
- 1799. Public stipends and subsidies.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.**(A) IN GENERAL.**

- 1811. In general.
- 1812. Nature, form, and purpose.
- 1813. — In general.
- 1814. — Application of criminal procedures.
- 1815. Age limitations.
- 1816. Persons and relationships affected or subject.
- 1817. — In general.
- 1818. — “De facto” or presumed parent or status in general.
- 1819. — Stepparents.
- 1820. — Grandparents.
- 1821. — Same-sex couples and partners.
- 1822. — Foster and adoptive parents.
- 1823. — Effect of emancipation.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 1824. Balancing of interests in general.
- 1825. Interest, role, and authority of government in general.
- 1826. Role, power, and authority of courts; discretion.

**(B) PROTECTIVE OR PENDENTE LITE
CUSTODY AND REMOVAL.**

- 1831. In general.
- 1832. Entry for investigation and removal in general.
- 1833. Requisites and safeguards in general.
- 1834. Necessity and grounds; probable cause and reasonable suspicion.
- 1835. — In general.
- 1836. — Judicial approval, warrant, or order in general.
- 1837. — Exigent circumstances and imminent risk in general.
- 1838. — Runaways and truants.
- 1839. — Deprivation, neglect, or abuse.
 - (1). In general.
 - (2). Living conditions and squalor.
 - (3). Child abuse.
- 1840. — Deprivation of services or education.
- 1841. — Abandonment or absence of parent.
- 1842. Proceedings.
- 1843. — In general.
- 1844. — Hearing.
- 1845. — Evidence.
- 1846. Disposition of child; placement.
- 1847. Duration, extension, modification, or revocation.
- 1848. Services, care, and treatment.

(C) CHILDREN IN NEED OF SUPERVISION.

- 1861. In general.
- 1862. Mental or emotional illness or disturbance in general.
- 1863. Loss or breakdown of parental control in general.
- 1864. Incurable or disobedient children in general.
- 1865. Runaways.
- 1866. Truants.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 1867. Vagrancy or idleness.
- 1868. Gang activity and consorting.
- 1869. Offense, violation, or infraction.

**(D) DEPENDENCY, PERMANENCY,
AND TERMINATION FACTORS;
CHILDREN IN NEED OF AID.****1. IN GENERAL.**

- 1881. In general.
- 1882. Dependency defined in general.
- 1883. Least restrictive means.
- 1884. Alternative remedies or placement.
- 1885. Past history or conduct.
- 1886. Needs, interest, and welfare of child.
- 1887. Preference or wishes of child.
- 1888. Post-termination plan for child.
- 1889. Adoptability and exceptions to adoption.
- 1890. Parental relationship or bond.
- 1891. Sibling relationship; separation.
- 1892. Likelihood of return to parent.
- 1893. Expectation or probability of improvement.
- 1894. Success and bonding with foster or adoptive families.
- 1895. Special needs children.
- 1896. Sexual orientation and transgender issues.
- 1897. Stipulations and agreements.
- 1898. Relinquishments and consent.
- 1899. — In general.
- 1900. — Voluntariness.
- 1901. — Withdrawal, revocation, and effect thereof.
- 1902. Multiple factors.

**2. UNFITNESS OR INCOMPETENCE OF PARENT
OR PERSON IN POSITION THEREOF.**

- 1911. In general.
- 1912. Inability to parent in general; skills.
- 1913. Age of parent.
- 1914. Mental or emotional condition or incapacity.
- 1915. Physical condition.
- 1916. Financial stability and impoverishment.
- 1917. Lack of employment or housing.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 1918. Dependency upon others for financial support.
- 1919. Frequency and instability of relationships.
- 1920. Misconduct in general; depravity.
- 1921. Drug and alcohol use and dependency.
- 1922. Domestic violence.
- 1923. Sexual behavior or misconduct.
- 1924. Conviction of crime; criminal history.
- 1925. Adjudication or termination as to other children.
- 1926. Incestuous parenthood.
- 1927. Special needs children.
- 1928. Sexual orientation and transgender issues.

3. DEPRIVATION, NEGLECT, OR ABUSE.

- 1941. In general.
- 1942. Definition of deprivation or neglect in general.
- 1943. Nature of harm or injury in general; failure to thrive.
- 1944. Employment and support.
- 1945. Necessaries and hygiene.
- 1946. Housing and living conditions.
- 1947. Endangerment.
- 1948. Failure to supervise, control, or protect.
- 1949. Exposure and access to firearms.
- 1950. Drug and alcohol use and dependency.
- 1951. — In general.
- 1952. — Fact of dependency.
- 1953. — Use during pregnancy.
- 1954. — Exposure and access.
- 1955. Commission of crime and incarceration.
- 1956. Vehicular offenses involving children.
- 1957. Domestic violence and altercations.
- 1958. — In general.
- 1959. — Exposure of child to.
- 1960. — Engaging or involving child in.
- 1961. Child abuse and molestation.
- 1962. — In general.
- 1963. — Physical or emotional abuse; cruelty.
- 1964. — Sexual abuse.
- 1965. Derivative neglect or abuse.
- 1966. — In general.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 1967. — Neglect or abuse of sibling or household member.
- 1968. — Neglect or abuse of non-sibling or third-party child.
- 1969. Protection or intervention against another.
- 1970. Custodian's associates and relationships.
- 1971. — In general.
- 1972. — Convicts and criminals.
- 1973. — Continued association with abusive parent or individual.
- 1974. — Frequency or repetitiveness of abusive relationships.
- 1975. Failure to plan.
- 1976. Future risk; past history or conduct.
- 1977. Special needs children.

4. DEPRIVATION OF SERVICES OR EDUCATION.

- 1991. In general.
- 1992. Education.
- 1993. Medical and dental.
- 1994. Mental health.
- 1995. Special needs children.

5. ABANDONMENT, ABSENCE, AND NONSUPPORT.

- 2001. In general.
- 2002. Deceased or unknown parent.
- 2003. Parental relationship or bond.
- 2004. Length of absence.
- 2005. Interest in child and demonstration thereof; persistence.
- 2006. Relinquishment or surrender of rights or child.
- 2007. Relocation without child.
- 2008. Leaving child in agency or third party custody; length.
- 2009. Failure or delay to petition for custody.
- 2010. Failure or delay to establish parentage.
- 2011. Failure to communicate or visit.
- 2012. Failure to attend activities and appointments.
- 2013. Nondisclosure of or unknown whereabouts or address.
- 2014. Arrearages and failure to support.
- 2015. Commission of crime and incarceration.
- 2016. Failure to plan.

211. INFANTS**6. REHABILITATION; REUNIFICATION EFFORTS.**

- 2021. In general.
- 2022. Entitlement and opportunity to rehabilitate.
- 2023. Time for rehabilitation; reasonableness.
- 2024. Unfitness or incompetence.
- 2025. Deprivation, neglect, or abuse.
- 2026. Deprivation of services.
- 2027. Abandonment or absence.
- 2028. Reunification plans and services.
- 2029. — In general.
- 2030. — Necessity and entitlement.
- 2031. — Requisites and sufficiency.
- 2032. — Efforts and compliance by government or agency.
- 2033. — Conditions in general.
- 2034. — Particular terms and conditions.
- 2035. — Visitation.
- 2036. — Duration.
- 2037. — Extension, termination, and renewal.
- 2038. Compliance by parent or custodian.
- 2039. Renewal of interest.
- 2040. Acceptance or denial of responsibility.
- 2041. Cooperation and progress.
- 2042. Efforts to resume custody or communicate; diligence.
- 2043. Counseling and treatment.
- 2044. Financial stability; employment and housing.
- 2045. Persistence of conditions.
- 2046. Failure to plan.
- 2047. Excuses and defenses in general.
- 2048. Parent deprived of custody or contact; custodial interference.
- 2049. Incarceration.

(E) PROCEEDINGS.

Proceedings on amendment, extension, or modification of placement, see ¶2286. Proceedings as to particular motions, see lines for those motions.

- 2061. In general.
- 2062. Orders of protection pending proceedings.
- 2063. Joinder and severance of causes or proceedings.
- 2064. Time for pleading, proceedings, or ruling; stay.
- 2065. Jurisdiction and venue.
- 2066. Inter-jurisdictional issues in general.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2067. Who may maintain; standing.
- 2068. — In general.
- 2069. — Private individuals.
- 2070. Notice and process.
- 2071. Plea or admission.
- 2072. Appearance, presence, and participation in general.
Appearance, presence, and participation in or at hearings, see ¶2097.
- 2073. — In general.
- 2074. — Parents and relatives.
- 2075. — Foster and de facto parents.
- 2076. — Other particular persons.
- 2077. Parties.
- 2078. — In general.
- 2079. — Intervention and joinder in general.
- 2080. — Parents and relatives.
- 2081. — Foster and de facto parents.
- 2082. — Other particular persons.
- 2083. Pleading.
- 2084. — In general.
- 2085. — Issues, proof, and variance.
- 2086. Discovery and disclosure in general.
- 2087. Reports and recommendations; examinations and assessments.
- 2088. — In general.
- 2089. — Physical, mental, and other examinations.
- 2090. — Home studies and similar assessments.
- 2091. — Multiple or independent examinations; appointment of professionals.
- 2092. Dismissal.
- 2093. Hearing.
- 2094. — In general; nature and purpose.
- 2095. — Necessity; right to hearing.
- 2096. — Course and conduct.
- 2097. — Presence of parties and counsel.
- 2098. — Public access; closure.
- 2099. — Disposition proceedings.
- 2100. Time for hearing.
- 2101. Continuance.
- 2102. Guardian ad litem or other representative.
Counsel, see XIV(J).
- 2103. Reference.

211. INFANTS

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2104. Reception of evidence; witnesses.
- 2105. Interview or hearing as to child evidence or testimony.
- 2106. Questions of fact or law.
- 2107. Instructions.
- 2108. Determination and findings.
- 2109. Rehearing and new trial.
- 2110. Costs and fees.
- 2111. — In general.
- 2112. — Attorney fees.
- 2113. — Stage or condition of cause.

(F) EVIDENCE.

- 2121. In general.
- 2122. Application of rules of evidence in general.
- 2123. Judicial notice.
- 2124. Presumptions, inferences, and burden of proof; prima facie rights.
- 2125. — In general.
- 2126. — Children in need of supervision in general.
- 2127. — Dependency, permanency, and rights termination in general.
- 2128. — Welfare and best interest of child.
- 2129. — Care, custody, and control by parent.
- 2130. — Fitness of parent.
- 2131. — Deprivation, neglect, or abuse.
- 2132. — Deprivation of services.
- 2133. — Abandonment, absence, and non-support.
- 2134. — Rehabilitation and reunification efforts.
- 2135. — Reports, recommendations, and studies.
- 2136. — Disposition and placement of child.
- 2137. Admissibility.
- 2138. — In general; necessity.
- 2139. — Conduct, circumstances, and character in general.
- 2140. — Therapy and treatment.
- 2141. — Other proceedings and dispositions.
- 2142. — Other misconduct or conviction.
- 2143. — Evidence wrongfully obtained.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2144. — Demonstrative evidence.
- 2145. — Computer evidence in general.
Documentary evidence, see 2150(2).
- 2146. — Declarations, admissions, and statements.
 - (1). In general.
 - (2). By parent or person in parental position.
 - (3). By child.
 - (4). — In general.
 - (5). — Child hearsay in general; procedure for admission.
 - (6). — Unavailability to testify.
 - (7). — Interviews, investigative questioning, and summaries thereof.
 - (8). — Other hearsay exceptions in general; trustworthiness and reliability.
 - (9). — Complaint; outcry.
 - (10). — Accusations against persons other than subject parent.
 - (11). — Necessity and sufficiency of corroboration.
- 2147. — Failure or delay in complaining.
- 2148. — Nonverbal communication; dolls, gestures, and illustrations.
- 2149. — False statements and recantations by child.
- 2150. — Documentary evidence.
 - (1). In general.
 - (2). Computerized evidence and print-outs.
 - (3). Private writings and electronic communications.
 - (4). Judicial proceedings, prosecutions, and orders.
 - (5). Reports in general.
 - (6). Law enforcement records and investigations.
 - (7). Agency investigations, studies, and reports.
 - (8). Reports of court-appointed professionals and guardian ad litem.
 - (9). Medical records and reports.
 - (10). Photographs, videos, and recordings.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2151. — Transcripts and former testimony.
- 2152. — Experiments, tests, and samples.
- 2153. — Expert and opinion evidence.
 - (1). In general.
 - (2). Medical professionals in general.
 - (3). Mental health professionals.
 - (4). Case and social workers.
- 2154. — Dispositional alternatives; prospects and suitability.
- 2155. Degree of proof.
- 2156. — In general.
- 2157. — Dependency, permanency, and rights termination in general.
- 2158. — Parental unfitness or incompetence in general.
- 2159. — Deprivation, neglect, or abuse.
- 2160. — Deprivation of services.
- 2161. — Abandonment or absence.
- 2162. — Disposition, placement, and custody.
- 2163. Weight and sufficiency.
- 2164. — In general.
- 2165. — Latitude and discretion in general.
- 2166. — Credibility, weight, and defects in general.
- 2167. — Parentage, de facto parents, and persons in loco parentis.
- 2168. — Children in need of supervision.
- 2169. — Dependency, permanency, and rights termination.
 - (1). In general.
 - (2). Adoptability; likelihood and probability of adoption.
 - (3). Parental unfitness or incompetence.
 - (4). Deprivation, neglect, or abuse.
 - (5). — In general.
 - (6). — Living conditions; clothing, food, and housing.
 - (7). — Endangerment and supervision.
 - (8). — Drug and alcohol abuse, dependency, and exposure.
 - (9). — Violence and crime.
 - (10). — Child abuse and molestation.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- (11). — Sibling and derivative neglect or abuse.
- (12). Deprivation of services or education.
- (13). Abandonment, absence, and nonsupport.
- (14). Relationship or bond with child.
- (15). Rehabilitation and reunification efforts.
- 2170. — Disposition, placement, and custody.
 - (1). In general.
 - (2). Visitation.
- 2171. — Child statements and testimony; sufficiency and corroboration.
- 2172. — Necessity of expert testimony.
- 2173. — Manner and conduct of proceedings.

(G) JUDGMENT, ORDER, AND DISPOSITION.**1. IN GENERAL.**

- 2181. In general.
- 2182. Summary judgment.
- 2183. Requisites and validity in general.
- 2184. Construction, operation, and effect in general.
- 2185. Amendment or correction.
- 2186. Time of taking effect; retroactivity.
- 2187. Opening and vacating.
- 2188. — In general; authority and discretion.
- 2189. — Grounds, factors, and considerations in general.
- 2190. — Needs, interest, and welfare of child.
- 2191. — Defects as to jurisdiction or process.
- 2192. — Absence, waiver, or ineffectiveness of counsel.
- 2193. — Fraud, and defects or insufficiency as to evidence; new evidence.
- 2194. — Consent, relinquishment, or plea.
- 2195. — Proceedings on motion in general.
- 2196. — Time for motion, proceedings, or ruling.
- 2197. — Jurisdiction and venue.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2198. — Pleading, notice, and process on motion.
- 2199. — Discovery, disclosure, and examinations.
- 2200. — Evidence.
- 2201. — Hearing.
- 2202. — Determination and findings.
- 2203. — Judgment or order; relief and effect.
- 2204. Default, and opening and vacating thereof.
- 2205. Res judicata and conclusiveness.
- 2206. Retention or reservation of jurisdiction.

2. NATURE AND SCOPE OF DISPOSITION.

- 2211. In general.
- 2212. Construction, operation, and effect in general.
- 2213. Return to subject parent or party.
- 2214. Placement or custody.
- 2215. — In general.
- 2216. — Authority and discretion as to selection in general.
- 2217. — Needs, interest, and welfare of child in general.
- 2218. — Rights of subject parent or party in general.
Return to subject parent or party as disposition, see
⊞2213. Visitation, see ⊞2238.
- 2219. — Other parent or stepparent.
- 2220. — Guardians and guardianships.
- 2221. — Adoptive placement.
- 2222. — Relatives in general.
- 2223. — Grandparents.
- 2224. — De facto parent.
- 2225. — Cohabitants and domestic partners.
- 2226. — Sexual orientation and transgender issues.
- 2227. — Same-sex partners.
- 2228. Conditions of placement or custody.
- 2229. Mental commitment, treatment, or therapy.
- 2230. — In general.
- 2231. — Counseling and therapy in general.
- 2232. — Anger management.
- 2233. — Chemical dependents.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2234. — Commitment or treatment of children.
- 2235. Foster care and institutional placement.
- 2236. Planned permanent living arrangements.
- 2237. Inter-jurisdictional placement.
- 2238. Visitation issues.
- 2239. Special needs children.
- 2240. Alternative dispositions; suspension of judgment.
- 2241. — In general.
- 2242. — Terms and conditions.
- 2243. — Revocation; proceedings.

3. IMPLEMENTATION AND ENFORCEMENT.

- 2251. In general.
- 2252. Role of agency in general.
- 2253. Enforcement in general; proceedings.
- 2254. Private enforcement; right of action.

**4. AMENDMENT, EXTENSION, OR MODIFICATION;
PERIODIC REVIEW.**

Modification of protective custody, see ⊞1847.

- 2261. In general.
- 2262. Authority and discretion in general.
- 2263. Grounds, factors, and considerations in general.
- 2264. Needs, interest, and welfare of child in general.
- 2265. Periodic review.
- 2266. — In general.
- 2267. — Necessity and entitlement.
- 2268. — Judicial review in general; scope of inquiry or authority.
Proceedings on judicial review, see ⊞2286.
- 2269. Placement or custody.
- 2270. — In general.
- 2271. — Of, from, or between family or relatives.
- 2272. — Of, from, or between parents or persons in position thereof.
- 2273. — Of or from agency placement or custody.
- 2274. Change or extension of, or removal from, foster or institutional care.
- 2275. — In general.
- 2276. — Protective custody or removal.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2277. — Grounds, factors, and considerations.
- 2278. — Transfers between foster parents or facilities, or to agency.
- 2279. — Transfers to alternate placement.
- 2280. Adoptive placement or custody.
- 2281. Mental commitment, treatment, or therapy.
- 2282. Change of permanent plan or goal.
- 2283. Return to subject parent or parent figure; reinstatement of parental rights.
- 2284. Visitation issues.
- 2285. Special needs children.
- 2286. Proceedings.
- 2287. — In general.
- 2288. — Time for motion, proceedings, or ruling.
- 2289. — Jurisdiction and venue.
- 2290. — Parties, intervention, and standing.
- 2291. — Pleading, notice, and process on motion.
- 2292. — Discovery, disclosure, and examinations.
- 2293. — Evidence.
- 2294. — Hearing.
- 2295. — Determination and findings.
- 2296. — Judgment or order; relief and effect.

**(H) TERMINATION OF JURISDICTION
OR DEPENDENCY.**

- 2301. In general.
- 2302. Grounds, factors, and considerations in general.
- 2303. Placement or custody; continuation or termination.
- 2304. Return to subject parent or party.
- 2305. Visitation issues.
- 2306. Effect of age, majority, or emancipation.
- 2307. Proceedings; effect of termination.

(I) LIABILITIES OF CARE AND MAINTENANCE.

- 2311. In general.
- 2312. Liability for support in general.
- 2313. — In general.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2314. — Parents.
- 2315. — Government or agency.
- 2316. Particular services and treatment.
- 2317. — In general.
- 2318. — Foster and institutional care.
- 2319. — Medical and dental care.
- 2320. — Counseling and mental health care.
- 2321. Proceedings, interjurisdictional issues, and modification.

(J) COUNSEL.

- 2331. In general.
- 2332. Right to counsel.
- 2333. — In general.
- 2334. — Children in general.
- 2335. — Parent or parent figure in general.
- 2336. — Stage or condition of cause.
 - (1). In general.
 - (2). Protective custody and removal.
 - (3). Trial or adjudication.
 - (4). Disposition.
 - (5). Liabilities of care, maintenance, and support.
 - (6). Other post-trial proceedings and appeal.
- 2337. — Waiver; self-representation.
- 2338. — Indigents and paupers; public defenders.
Appointment on appeal, see ¶2399.
- 2339. — Third parties.
- 2340. Withdrawal and change of counsel.
- 2341. Eligibility and qualifications of counsel; conflicts of interest.
- 2342. Arguments and conduct of counsel.
- 2343. Effectiveness of counsel.
- 2344. — In general.
- 2345. — Protective custody and removal.
- 2346. — Preliminary proceedings.
- 2347. — Trial or adjudication; instructions.
- 2348. — Evidence; procurement, presentation, and objections.
- 2349. — Disposition.
- 2350. — Other post-trial proceedings and appeal.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

2351. Access to counsel; deprivation of services.
2352. Proceedings as to right or waiver.
- (K) APPEAL AND REVIEW.**
2361. In general.
2362. Decisions reviewable.
2363. — In general.
2364. — Nature, scope, and effect of decision in general.
2365. — Courts and other tribunals subject to review.
2366. — Rendition, form, and entry of judgment or order.
2367. — Interlocutory determinations and finality in general.
2368. — Protective custody and removal of child.
2369. — Children in need of supervision.
2370. — Dependency, permanency, and rights termination.
2371. — Rehabilitation and reunification efforts.
2372. — Disposition, placement, and custody.
2373. — Vacation, extension, and modification.
2374. Right of review and parties.
2375. — In general.
2376. — Parties and other persons affected or interested.
2377. — Aggrievement.
2378. Preservation of grounds for review.
2379. — In general.
2380. — Issues and questions in lower court in general.
2381. — Objections and motions and rulings thereon.
2382. — Exceptions.
2383. — Motions for new trial.
2384. — Cases and questions reserved or certified.
2385. Perfection; notice and effect of appeal.
2386. — In general.
2387. — Time for proceedings.
2388. — Petition or prayer, allowance, and certificate or affidavit.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

2389. — Payment of fees and costs; bond or other security.
2390. — Writ of error, citation, or notice of appeal.
2391. — Entry, docketing, and appearance.
2392. — Effect of transfer or perfection of appeal in general.
2393. — Supersedeas or stay of proceedings.
2394. Record.
2395. Briefs and assignments of error.
2396. Proceedings in forma pauperis.
2397. — In general.
2398. — Indigency and determination thereof.
2399. — Counsel.
2400. — Free record or transcript.
2401. — Frivolous or futile appeal.
2402. Dismissal and mootness.
2403. Hearing and rehearing.
2404. Scope, standards, and questions on review.
2405. — In general.
2406. — Questions considered.
2407. Trial or review de novo.
2408. Parties entitled to allege error; estoppel.
2409. Presumptions, inferences, and burden of proof.
2410. Discretion of lower court.
2411. Questions of fact and findings.
2412. — In general.
2413. — Protective custody and removal of child.
2414. — Children in need of supervision.
2415. — Dependency, permanency, and rights termination.
- (1). In general.
- (2). Parental unfitness or incompetence.
- (3). Deprivation, neglect, or abuse.
- (4). Deprivation of services.
- (5). Abandonment or absence.
2416. — Rehabilitation and reunification efforts.
2417. — Disposition, placement, and custody.

211. INFANTS**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2418. — Failure or refusal to find.
- 2419. Harmless or prejudicial error.
- 2420. — In general.
- 2421. — Protective custody and removal of child.
- 2422. — Children in need of supervision.
- 2423. — Dependency, permanency, and rights termination.
- 2424. — Rehabilitation and reunification efforts.
- 2425. — Manner and conduct of proceedings in general.
- 2426. — Pleading, notice, and process.
- 2427. — Hearing, instructions, and issues relating to jury.
- 2428. — Determination, findings, and verdict.
- 2429. — Evidence, reception thereof, and witnesses in general.
- 2430. — Statements and declarations; hearsay.
- 2431. — Documentary evidence and reports.
- 2432. — Judgment, disposition, and placement.
- 2433. — Vacation, extension, and modification.
- 2434. — Counsel; arguments, conduct, and effectiveness.
- 2435. Determination and remand.

XV. JUVENILE JUSTICE.**(A) IN GENERAL.**

- 2441. In general.
- 2442. Interest, role, and authority of government in general.
- 2443. Role, power, and authority of courts; discretion.
- 2444. Nature, form, and purpose of proceedings.
- 2445. — In general.
- 2446. — Application of criminal procedures.
- 2447. Age limitations.
- 2448. Responsibility for offense or violation.
- 2449. Capacity to commit offense or violation.

XV. JUVENILE JUSTICE.(Cont'd)

- 2450. Acts in aid, or under direction, of others.
- 2451. Defenses in general.
- 2452. Competency to commit offense or violation; insanity.
- 2453. Entrapment and outrageous conduct.

**(B) PARTICULAR OFFENSES OR VIOLATIONS
AND DEFENSES THERETO.**

- 2461. In general.
- 2462. Arson and malicious mischief.
- 2463. Assault and battery.
- 2464. Burglary and home invasion.
- 2465. Computer offenses and data infringement.
- 2466. Disorderly conduct and breach of the peace.
- 2467. Drugs; controlled substances.
- 2468. False pretenses and forgery.
- 2469. Gang offenses, racketeering, and extortion.
- 2470. Homicide and assault with intent to kill.
- 2471. Kidnapping and false imprisonment.
- 2472. Larceny and receiving stolen property.
- 2473. Motor vehicle offenses.
- 2474. Obscenity and lewdness.
- 2475. Obstructing justice, resisting arrest, and perjury.
- 2476. Prohibited hours and premises; curfew.
- 2477. Prohibited products; tobacco and liquor.
- 2478. Prostitution and pimping.
- 2479. Sexual assault, rape, and sodomy.
- 2480. Robbery.
- 2481. School offenses and truancy.
- 2482. Trespass.
- 2483. Weapons, ammunition, and explosives.
- 2484. Other particular offenses.

(C) INVESTIGATION AND APPREHENSION.

- 2491. In general.
- 2492. Searches and seizures.
Waiver and consent, see SEARCHES AND SEIZURES V.
- 2493. — In general.
- 2494. — Warrant in general; exigent circumstances.
- 2495. — Probable cause.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

- 2496. — Manner, duration, and scope.
- 2497. Stop, frisk, and investigatory detention.
- 2498. — In general.
- 2499. — Grounds, suspicion, or cause.
- 2500. — Manner, duration, and scope.
- 2501. — Vehicular stops.
- 2502. Arrest.
- 2503. — In general.
- 2504. — Warrant in general; exigent circumstances.
- 2505. — Probable cause.
- 2506. — Search incident to.
- 2507. Preliminary disposition in general; presentment to officer.
- 2508. Parental notice or contact by authorities.
- 2509. Booking, fingerprinting, and photographing.
- 2510. Tests and samples.
- 2511. Communication by juvenile with parent or third party.
- 2512. Detention pending release, trial, or disposition.
- 2513. — In general.
- 2514. — Necessity, grounds, and purpose.
- 2515. — Proceedings or hearing in general.
- 2516. — Time for proceedings or hearing.
- 2517. — Notice to or presence of parent.
- 2518. — Evidence.
- 2519. — Determination, disposition, and effect thereof.
- 2520. — Nature and place of confinement in general; transfers.
- 2521. — Duration and conditions of confinement; extension.
- 2522. — Liabilities of care and maintenance.
- 2523. Placement pendente lite.
- 2524. Bail or release on recognizance.
- 2525. — In general.
- 2526. — On appeal or review.

(D) PRELIMINARY PROCEEDINGS.

- 2531. In general.
- 2532. Preliminary inquiry by officer.
- 2533. Commencement or institution of charges.

XV. JUVENILE JUSTICE.(Cont'd)

- 2534. Arraignment and preliminary examination or hearing.
- 2535. — In general.
- 2536. — Ascertainment of cause; proceedings.
- 2537. — Advice and warnings.
- 2538. Bench warrants and pickup orders.
- 2539. Competency to stand trial; hearing.
- 2540. Pleas, plea agreements, and procedures.

(E) TRIAL AND ADJUDICATION.

- 2551. In general.
- 2552. Joinder and severance.
- 2553. Time for proceedings; laches.
- 2554. Jurisdiction and venue.
- 2555. Inter-jurisdictional issues; certification for federal proceeding.
- 2556. Notice and process.
- 2557. Appearance, presence, and participation in general.
Appearance, presence, and participation in or at hearings, see ¶2573.
- 2558. Parties.
- 2559. Pleading.
- 2560. — In general.
- 2561. — Issues, proof, and variance.
- 2562. Discovery and disclosure in general.
- 2563. Reports and recommendations.
- 2564. — In general.
- 2565. — Physical, mental, and other examinations.
- 2566. — Home studies and similar assessments.
- 2567. — Multiple or independent examinations; appointment of professionals.
- 2568. Dismissal or discontinuance.
- 2569. Hearing.
- 2570. — In general; nature and purpose.
- 2571. — Necessity; right to hearing.
- 2572. — Course and conduct.
- 2573. — Presence of parties and counsel.
- 2574. — Public access; closure.
- 2575. Time for hearing; speedy trial.
- 2576. Continuance.
- 2577. Guardian ad litem or other representative.

Counsel, see XV(I).

211. INFANTS**XV. JUVENILE JUSTICE.**(Cont'd)

- 2578. Reference.
- 2579. Reception of evidence; witnesses.
- 2580. Questions of fact or law.
- 2581. Instructions.
- 2582. Determination and findings.
- 2583. Rehearing and new trial.
- 2584. Judgment, order, or adjudication.
- 2585. — In general.
- 2586. — Amendment, correction, or modification.
- 2587. — Construction, operation, and effect.
- 2588. — Res judicata and conclusiveness.
- 2589. Costs and fees.
- 2590. — In general.
- 2591. — Attorney fees.
- 2592. — Stage or condition of cause.

(F) EVIDENCE.

- 2601. In general.
- 2602. Application of rules of evidence in general.
- 2603. Judicial notice.
- 2604. Presumptions, inferences, and burden of proof.
- 2605. — In general.
- 2606. — Innocence.
- 2607. — Age.
- 2608. — Capacity and responsibility.
- 2609. — Notice.
- 2610. — Tampering, chain of custody, and illegal evidence.
- 2611. — Search, seizure, and arrest.
- 2612. — Confessions, admissions, and statements.
- 2613. — Offenses, violations, and defenses.
- 2614. — Intent, state of mind, and motive.
- 2615. — Identification and identity.
- 2616. — Circumstantial evidence.
- 2617. — Failure to appear; missing witness.
- 2618. Admissibility.
- 2619. — In general.
- 2620. — Other acts and offenses; character.
- 2621. — Evidence wrongfully obtained.
- 2622. — Age and identification.

XV. JUVENILE JUSTICE.(Cont'd)

- 2623. — Demonstrative evidence.
- 2624. — Computer evidence in general.
Documentary evidence, see ¶2626(2).
- 2625. — Confessions, admissions, and statements.
 - (1). In general.
 - (2). Child hearsay.
 - (3). — In general.
 - (4). — Procedure for admission; notice.
 - (5). — Unavailability to testify.
 - (6). — Interviews and summaries.
 - (7). — Hearsay exceptions in general; trustworthiness and reliability.
 - (8). — Complaint; outcry.
 - (9). — Accusations against third parties.
 - (10). — Necessity and sufficiency of corroboration.
 - (11). — Failure or delay in complaining in general.
 - (12). Interrogation and investigatory questioning.
 - (13). — In general.
 - (14). — Voluntariness in general.
 - (15). — Warnings and counsel; waivers.
 - (16). — Notice to, or consent of, parent or guardian.
 - (17). — Presence, availability, or consultation of parent or guardian.
 - (18). — Evidence as to circumstances and voluntariness.
 - (19). Statements of accomplices and codefendants.
- 2626. — Documentary evidence.
 - (1). In general.
 - (2). Computerized evidence and print-outs.
 - (3). Private writings and electronic communications.
 - (4). Judicial proceedings, prosecutions, and orders.
 - (5). Reports in general.
 - (6). Law enforcement records and investigations.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

- (7). Agency investigations, studies, and reports.
- (8). Reports of court-appointed professionals and guardian ad litem.
- (9). Medical records and reports.
- (10). Photographs.
- 2627. — Transcripts and former testimony.
- 2628. — Copies and secondary evidence.
- 2629. — Experiments, tests, and samples.
- 2630. — Expert and opinion evidence.
- 2631. — Testimony of accomplices and co-defendants.
- 2632. Degree of proof.
- 2633. — In general.
- 2634. — Reasonable doubt.
- 2635. Weight and sufficiency.
- 2636. — In general.
- 2637. — Credibility in general; child testimony.
- 2638. — Circumstantial evidence in general.
- 2639. — Defenses in general.
- 2640. — Particular offenses, violations, or defenses.
 - (1). In general.
 - (2). Assault and battery.
 - (3). Burglary and home invasion.
 - (4). Controlled substance offenses.
 - (5). Gang offenses.
 - (6). Homicide and assault to kill.
 - (7). Obstructing justice, resisting arrest, and perjury.
 - (8). Robbery, larceny, and possession of stolen property.
 - (9). Sex offenses.
 - (10). Trespass.
 - (11). Weapons, ammunition, and explosives.
- 2641. — Intent, state of mind, and motive.
 - (1). In general.
 - (2). Possess or distribute.
 - (3). Steal or receive.
 - (4). Damage to property.
 - (5). Injure or harm the person.
 - (6). Sex offenses.
 - (7). Inflict mortal injury; intent to kill.

XV. JUVENILE JUSTICE.(Cont'd)

- 2642. — Aiding and abetting; accomplice liability.
- 2643. — Age and identification.
- 2644. — Corroboration; necessity and sufficiency.
 - (1). In general.
 - (2). Child statements and testimony.
 - (3). Accomplice testimony.
- 2645. — Effect of confession, admission, or statement.

(G) DISPOSITION.**1. IN GENERAL.**

- 2661. In general.
- 2662. Factors and considerations in general.

2. PARTICULAR DISPOSITIONS.

- 2671. In general.
- 2672. Placement or custody in general.
- 2673. Drug and alcohol abuse and treatment; chemical dependents.
- 2674. Mental health placement, commitment, and treatment.
- 2675. — In general.
- 2676. — Sex offenders.
Sex offender registration and community notification, see §3204.
- 2677. Other non-punitive order or disposition; third-party conduct.
- 2678. Liabilities of care and maintenance.
Care and maintenance in correctional facility, jail, industrial or reform school, or similar institution, see §3146.
- 2679. — In general.
- 2680. — Liability of parents.
- 2681. Correctional, restrictive, or rehabilitative custody or sentence.
- 2682. — In general.
- 2683. — Duration or term.
- 2684. — Factors considered.
 - (1). In general.
 - (2). Factors related to offense.
 - (3). Factors related to juvenile; repeat offenders.
- 2685. — Sentencing guidelines.
- 2686. — Credits.
- 2687. — Fines and restitution orders.
- 2688. Probation or suspension of sentence.
- 2689. — In general.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

2690. — Grounds, factors, and considerations.

(1). In general.

(2). Factors related to offense.

(3). Factors related to juvenile.

2691. — Duration or term.

2692. — Conditions.

(1). In general.

(2). Particular conditions.

2693. — Incarceration and probation.

2694. — Supervision and searches.

3. DISPOSITION PROCEEDINGS.

Proceedings as to post-disposition violations, see
 ⇒2733. *Proceedings on particular motions, see lines*
for those motions.

2701. In general.

2702. Time for motion, proceedings, or ruling.

2703. Parties, intervention, and standing.

2704. Pleading, notice, and process.

2705. Discovery and disclosure.

2706. Reports and recommendations.

2707. — In general.

2708. — Physical, mental, and other examinations.

2709. — Home studies and similar assessments.

2710. — Predisposition investigation and reports.

2711. Hearing.

2712. Evidence.

2713. Determination, findings, and statement of reasons.

2714. Judgment or order; conclusiveness, operation, and effect.

4. AMENDMENT, MODIFICATION, AND REVOCATION.

2721. In general; authority and discretion.

2722. Amendment, modification, or extension of placement or custody in general.

2723. Amendment, modification, or extension of restrictive custody or sentence.

2724. — In general.

2725. — Increase or reduction of sanctions or punishment.

2726. — Place or conditions of confinement; programs and services.

2727. — Fines and restitution.

XV. JUVENILE JUSTICE.(Cont'd)

2728. — Probation, community control, or parole.

2729. Violations and defenses thereto.

2730. — In general.

2731. — Probation.

2732. — Validity of underlying adjudication; collateral attack.

2733. Proceedings.

2734. — In general.

2735. — Time for motion, proceedings, or ruling.

2736. — Jurisdiction and venue.

2737. — Parties, intervention, and standing.

2738. — Pleading, notice, and process.

2739. — Evidence.

2740. — Hearing and determination.

2741. — Findings and statement of reasons.

2742. Judgment or disposition on violation or revocation.

2743. — In general.

2744. — Reimposition or continuation of probation.

2745. — Modification or extension of probation.

2746. — Restrictive custody or sentence; credits.

2747. — Sentencing guidelines.

2748. — Amendment, correction, opening and vacating.

2749. Modification or extension based on mental illness; sex offenders.

5. ALTERNATIVE DISPOSITIONS; NON-WARDSHIP PROBATION AND DIVERSION.

2751. In general.

2752. Prior to judgment or adjudication; necessity of plea.

2753. After imposition of judgment; stay of commitment.

2754. Conditions and satisfaction thereof.

2755. Violations and revocation, and proceedings thereon; restoration of prosecution.

6. HYBRID DISPOSITIONS; JUVENILE AND ADULT SANCTIONS.

2761. In general.

2762. Proceedings to impose.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

2763. Violations and revocation; proceedings and succeeding prosecution.

7. EFFECT OF AGE, MAJORITY, OR EXPIRATION OF SENTENCE OR JURISDICTION.

2771. In general.

2772. Correctional or punitive disposition.

2773. Probation or suspension of sentence.

(H) OPENING AND VACATING; POST-ADJUDICATION RELIEF.

2781. In general.

2782. Nature and availability of remedy; other remedies.

2783. Authority and discretion in general.

2784. Grounds, factors, and considerations.

2785. — In general.

2786. — Change in law or fact.

2787. — Investigation or apprehension.

2788. — Plea and preliminary proceedings.

2789. — Trial and adjudication.

2790. — Evidentiary defect or insufficiency; new evidence.

2791. — Sentence, placement, or other disposition.

2792. — Probation.

2793. — Mental commitment or treatment.

2794. — Counsel; arguments, conduct, and effectiveness.

2795. — Rehabilitation and reform.

2796. — Correctional or rehabilitative custody.

2797. Proceedings.

2798. — In general.

2799. — Time for motion, proceedings, or ruling.

2800. — Jurisdiction and venue.

2801. — Parties, intervention, and standing.

2802. — Pleading, notice, and process on motion.

2803. — Evidence.

2804. — Hearing.

2805. — Determination and findings.

2806. — Judgment; conclusiveness.

2807. Scope of relief.

2808. — In general.

2809. — Resentencing.

(I) COUNSEL; PROSECUTORIAL MISCONDUCT.

Right to and waiver of counsel during interrogation, see §2625(15).

2821. In general.

2822. Right to counsel.

2823. — In general.

2824. — Stage or condition of cause.

(1). In general.

(2). Detention and preliminary proceedings.

(3). Jury selection and plea.

(4). Trial or adjudication.

(5). Sentencing or disposition.

(6). Mental commitment or treatment.

(7). Other post-trial proceedings and appeal.

2825. — Waiver; self-representation.

2826. — Indigents and paupers; public defenders.

Appointment on appeal, see §2900.

2827. — Parents and other third parties.

2828. Withdrawal and change of counsel.

2829. Eligibility and qualifications of counsel; conflicts of interest.

2830. — In general.

2831. — For government.

2832. — For defense.

2833. Arguments and conduct of counsel.

2834. — In general.

2835. — Preliminary and pretrial proceedings; jury selection.

2836. — Remarks and conduct at trial.

2837. — Opening statement and closing argument.

2838. — Loss or destruction of evidence.

2839. — Other particular conduct and arguments.

2840. Effectiveness of counsel.

2841. — In general.

2842. — Detention and preliminary proceedings.

2843. — Jury selection and plea.

2844. — Trial or adjudication.

2845. — Evidence; procurement, presentation, and objections.

2846. — Sentencing or disposition.

2847. — Mental commitment or treatment.

2848. — Other post-trial proceedings and appeal.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

2849. Access to counsel; deprivation of services.
 2850. Proceedings as to right or waiver.

(J) APPEAL AND REVIEW.

2861. In general.
 2862. Mode of review; jurisdiction and transfer thereof.
 2863. Decisions reviewable.
 2864. — In general.
 2865. — Nature, scope, and effect of decision in general.
 2866. — Courts and other tribunals subject to review.
 2867. — Rendition, form, and entry of judgment or order.
 2868. — Interlocutory determinations and finality in general.
 2869. — Arrests, searches, stops, and detention.
 2870. — Competency to stand trial.
 2871. — Pleas, plea agreements, and procedures.
 2872. — Manner and conduct of proceedings; evidence.
 2873. — Judgment, disposition, and placement.
 2874. — Sentence or punishment; restitution.
 2875. — Probation and revocation thereof.
 2876. — Mental health placement, commitment and treatment.
 2877. — Modification, vacation, and post-adjudication relief.
 2878. Right of review and parties.
 2879. Preservation of grounds for review.
 2880. — In general.
 2881. — Issues and questions in lower court in general.
 2882. — Objections and motions and rulings thereon.
 2883. — Exceptions.
 2884. — Motions for new trial.
 2885. — Cases and questions reserved or certified.
 2886. Perfection; notice and effect of appeal.
 2887. — In general.
 2888. — Time for petition, proceedings, or ruling.

XV. JUVENILE JUSTICE.(Cont'd)

2889. — Petition or prayer, allowance, and certificate or affidavit.
 2890. — Payment of fees and costs; bond or other security.
 2891. — Writ of error, citation, or notice of appeal.
 2892. — Entry, docketing, and appearance.
 2893. — Effect of transfer or perfection of appeal in general.
 2894. — Supersedeas or stay of proceedings.
 2895. Record.
 2896. Briefs and assignments of error.
 2897. Proceedings in forma pauperis.
 2898. — In general.
 2899. — Indigency and determination thereof.
 2900. — Counsel.
 Ineffective assistance of counsel on appeal, see
 \Rightarrow 2848.
 2901. — Free record or transcript.
 2902. — Frivolous or futile appeal.
 2903. Dismissal and mootness.
 2904. Hearing and rehearing.
 2905. Scope, standards, and questions on review.
 2906. — In general.
 2907. — Questions considered.
 2908. Trial or review de novo.
 2909. Parties entitled to allege error; estoppel.
 2910. Presumptions, inferences, and burden of proof.
 2911. Discretion of lower court.
 2912. Questions of fact and findings.
 2913. — In general.
 2914. — Arrests, searches, stops, and detention.
 2915. — Competency to stand trial.
 2916. — Pleas, plea agreements, and procedures.
 2917. — Manner and conduct of proceedings; evidence.
 2918. — Determination, judgment, and disposition.
 2919. — Sentence or punishment; restitution.
 2920. — Probation and revocation thereof.

211. INFANTS**XV. JUVENILE JUSTICE.(Cont'd)**

- 2921. — Mental health placement, commitment, and treatment.
- 2922. — Modification, vacation, and post-adjudication relief.
- 2923. — Counsel; arguments, conduct, and effectiveness.
- 2924. Harmless or prejudicial error.
- 2925. — In general.
- 2926. — Arrests, searches, stops, and detention.
- 2927. — Competency to stand trial.
- 2928. — Pleas, plea agreements, and procedures.
- 2929. — Manner and conduct of proceedings in general.
- 2930. — Pleading, notice, and process.
- 2931. — Hearing, instructions, and issues relating to jury.
- 2932. — Determination, findings, and verdict.
- 2933. — Evidence, reception thereof, and witnesses.
- 2934. — Confessions, admissions, and statements; hearsay.
- 2935. — Documentary evidence and reports.
- 2936. — Judgment, disposition, and placement.
- 2937. — Sentence or punishment; restitution.
- 2938. — Probation and revocation thereof.
- 2939. — Mental health placement, commitment, and treatment.
- 2940. — Modification, vacation, and post-adjudication relief.
- 2941. — Counsel; arguments, conduct, and effectiveness.
- 2942. Determination and remand.
- 2943. — In general.
- 2944. — Remand in general.
- 2945. — Compliance with mandate; proceedings after remand.
- 2946. — Ordering new trial.

XVI. RIGHTS AND PRIVILEGES AS TO ADULT PROSECUTIONS.**(A) IN GENERAL.**

- 2951. In general.

XVI. RIGHTS AND PRIVILEGES AS TO ADULT PROSECUTIONS.(Cont'd)

- 2952. Right to juvenile prosecution or treatment.
- 2953. Interest, role, and authority of government in general; public policy.
- 2954. Role, power, and authority of courts.
- 2955. Application of criminal or adult procedures.
- 2956. Notification of parent, guardian, or representative.
- 2957. Jurisdiction of adult or juvenile court.
- 2958. Effect of age, majority, or emancipation.
- 2959. Nature of crime or offense.
- 2960. Evidence.

(B) JUVENILE TRANSFERS AND CERTIFICATIONS.

- 2971. In general.
- 2972. Estoppel, waiver, or consent by juvenile.
- 2973. Mandatory or automatic transfer for adult prosecution.
- 2974. Role, authority, and discretion of prosecutor.
- 2975. — In general.
- 2976. — Nature of crime or offense.
- 2977. — Certification of juvenile or records.
- 2978. Waiver by court for adult prosecution.
Waiver under young offender statutes, see ¶3028.
- 2979. — In general.
- 2980. — Nature and purpose.
- 2981. — Necessity and compliance in general.
- 2982. — Proceedings in general.
- 2983. — Application of criminal procedures.
- 2984. — Time for motion, proceedings, or ruling.
- 2985. — Pleading, notice, and process.
- 2986. — Discovery, disclosure, and examinations.
- 2987. — Investigation and inquiry in general.
- 2988. — Grounds, factors, and considerations.
- 2989. — Evidence.
- (1). In general.

211. INFANTS**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- (2). Presumptions, inferences, and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 2990. — Hearing in general and time therefor.
- 2991. — Questions of fact or law.
- 2992. — Counsel or guardian ad litem.
- 2993. — Determination and findings.
- 2994. — Rehearing and new trial.
- 2995. — Judgment, order, or certificate.
- 2996. — Construction, operation, and effect in general.
- 2997. Operation and effect as to proceedings after transfer.
- 2998. Time for adult proceedings or trial after transfer.
- 2999. Transfer from adult court.
- 3000. Costs and fees; indigents.

(C) SENTENCING OF MINORS AS ADULTS.

Sentencing under young offender statutes, see XVI(D).

- 3011. In general.
- 3012. Hybrid dispositions; juvenile and adult sanctions.
- 3013. Effect of age or majority; extension of jurisdiction as to sentence.

**(D) YOUNG OFFENDER TREATMENT
AND SENTENCE.**

- 3021. In general.
- 3022. Nature, purpose, and goals.
- 3023. Right to young offender treatment or sentence in general.
- 3024. Factors and considerations in general.
- 3025. Age and age limitations.
- 3026. Nature and circumstances of crime or offense.
- 3027. Jurisdiction of adult or juvenile court in general.
- 3028. Waiver or transfer for adult prosecution.
- 3029. — In general.
- 3030. — Proceedings.
- 3031. Adult prosecution and proceedings issues in general.
- 3032. Operation and effect of status or conviction; vacatur.
- 3033. Sentence or punishment.

**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- 3034. — In general.
- 3035. — Authority and discretion in general.
- 3036. — Eligibility, suitability, and benefit.
 - (1). In general.
 - (2). Necessity of determination.
 - (3). Factors and considerations in general.
 - (4). Age and age limitations.
 - (5). Nature of crime or offense.
- 3037. — Sentencing procedure in general.
- 3038. — Presentence investigation and reports.
- 3039. — Findings and statement of reasons.
- 3040. — Alternatives and options.
- 3041. — Length or duration of sentence.
- 3042. — Aggravating and mitigating circumstances.
- 3043. — Determinate or indeterminate sentence.
- 3044. — Commencement of sentence; tolling.
- 3045. — Multiple convictions or counts.
- 3046. — Prior, concurrent, or consecutive sentence.
- 3047. — Credits.
- 3048. — Fines and restitution orders.
- 3049. — Probation, and parole as a sentence.
 - (1). In general.
 - (2). Conditions.
 - (3). Incarceration and probation or parole.
 - (4). Violations and revocation; proceedings.
- 3050. — Hybrid dispositions; juvenile and adult sanctions.
- 3051. — Modification, vacation, or correction; periodic review.
- 3052. — Resentencing.
- 3053. Private right of action.

(E) APPEAL AND REVIEW.

Appeal and review issues in criminal prosecutions in general, see CRIMINAL LAW.

- 3061. In general.
- 3062. Decisions reviewable.
- 3063. — In general.

211. INFANTS**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- 3064. — Nature, scope, and effect of decision in general.
- 3065. — Courts and other tribunals subject to review.
- 3066. — Rendition, form, and entry of judgment or order.
- 3067. — Interlocutory determinations and finality in general.
- 3068. — Juvenile transfers and certifications.
- 3069. — Young offender treatment and sentence.
- 3070. Right of review and parties.
- 3071. Preservation of grounds for review.
- 3072. Perfection; notice and effect of appeal.
- 3073. Record.
- 3074. Briefs and assignments of error.
- 3075. Proceedings in forma pauperis.
- 3076. — In general.
- 3077. — Indigency and determination thereof.
- 3078. — Counsel.
- 3079. — Free record or transcript.
- 3080. — Frivolous or futile appeal.
- 3081. Dismissal and mootness.
- 3082. Hearing and rehearing.
- 3083. Scope, standards, and questions on review.
- 3084. — In general.
- 3085. — Questions considered in general.
- 3086. — Juvenile transfers and certifications.
- 3087. — Young offender treatment and sentence.
- 3088. Trial or review de novo.
- 3089. Parties entitled to allege error; estoppel.
- 3090. Presumptions, inferences, and burden of proof.
- 3091. — In general.
- 3092. — Juvenile transfers and certifications.
- 3093. — Young offender treatment and sentence.
- 3094. Discretion of lower court.
- 3095. — In general.
- 3096. — Juvenile transfers and certifications.

**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- 3097. — Young offender treatment and sentence.
- 3098. Questions of fact and findings.
- 3099. — In general.
- 3100. — Juvenile transfers and certifications.
- 3101. — Young offender treatment and sentence.
- 3102. Harmless or prejudicial error.
- 3103. — In general.
- 3104. — Juvenile transfers and certifications in general.
- 3105. — Manner and conduct of proceedings in general.
- 3106. — Notice, process, and pleading.
- 3107. — Hearing, instructions, and issues relating to jury.
- 3108. — Determination, findings, and verdict.
- 3109. — Evidence, reception thereof, and witnesses.
- 3110. — Young offender treatment and sentence.
- 3111. — Counsel; arguments, conduct, and effectiveness.
- 3112. Determination and remand.

**XVII. CORRECTIONAL AND REHABILITATIVE
CUSTODY.**

- 3121. In general.
- 3122. Establishment and maintenance.
- 3123. Management and operation in general.
- 3124. Officers and employees.
- 3125. — In general.
- 3126. — Eligibility and qualifications; hiring or appointment.
- 3127. — Compensation and benefits.
- 3128. — Authority and powers.
- 3129. — Duties, responsibilities, and liabilities.
- 3130. — Immunity.
- 3131. — Tenure, discipline, and discharge.
- 3132. — Offenses.
- 3133. Conditions of confinement.
- 3134. — In general.
- 3135. — Programs in general.
- 3136. — Rights and privileges in general.

211. INFANTS**XVII. CORRECTIONAL AND REHABILITATIVE CUSTODY.(Cont'd)**

- 3137. — Access to courts; library and assistance.
- 3138. — Food and housing.
- 3139. — Health care.
- 3140. — Contraband; searches and confiscation.
- 3141. Place of confinement.
- 3142. — In general.
- 3143. — Acceptance, assignment, and classification.
- 3144. — Solitary confinement and segregation.
- 3145. — Transfer.
- 3146. Liabilities of care and maintenance.
- 3147. Discipline.
- 3148. — In general.
- 3149. — Grounds.
- 3150. — Proceedings.
- 3151. — Punishment.
- 3152. Duration of confinement.
- 3153. — In general.
- 3154. — Credits; good behavior.
- 3155. — Conditional release or furlough.
- 3156. Parole or aftercare.
- 3157. Discharge.

XVIII. RECORDS.

- 3161. In general.
- 3162. Maintenance; purpose and accuracy.
- 3163. Access and dissemination; confidentiality.
- 3164. Sealing and redaction.
- 3165. Expungement or correction.
- 3166. Proceedings on application, evidence, and appeal.
- 3167. Child protection records.
Criminal records in general, see CRIMINAL LAW.
- 3168. — In general.
- 3169. — Maintenance; purpose and accuracy.
- 3170. — Access and dissemination; confidentiality.
- 3171. — Sealing and redaction.
- 3172. — Expungement or correction.
- 3173. — Neglect, dependency, or termination.
- 3174. — Child abuse.

XVIII. RECORDS.(Cont'd)

- 3175. — Foster or institutional care or placement.
- 3176. — Special needs children.
- 3177. — Effect of dismissal or nonsuit.
- 3178. — Scope and extent of use.
- 3179. — Estoppel and waiver.
- 3180. — Proceedings and review.
 - (1). In general; standards and scope.
 - (2). Right of action, parties, and standing.
 - (3). Time for motion, proceedings, or ruling.
 - (4). Jurisdiction and venue.
 - (5). Pleading, notice, and process.
 - (6). Discovery and disclosure.
 - (7). In camera examination.
 - (8). Evidence.
 - (9). Hearing; counsel.
 - (10). Determination and findings.
 - (11). Judgment, remedies, and relief.
 - (12). Appeal.
- 3181. Juvenile delinquent and offender records.
- 3182. — In general.
- 3183. — Pretrial proffer or certificate of non-existence.
- 3184. — Maintenance; purpose and accuracy.
- 3185. — Access and dissemination; confidentiality.
- 3186. — Sealing and redaction.
- 3187. — Expungement or correction.
- 3188. — Offender registry or index.
- 3189. — Law enforcement records in general; use and sharing.
- 3190. — Statistical, historical, and other non-identifying information.
- 3191. — Name, photo, or likeness.
- 3192. — Arrest, detention, and transfer.
- 3193. — Adjudication or conviction.
- 3194. — Sentence, punishment, or disposition; presentence report.
- 3195. — Effect of acquittal, dismissal, set-aside, or discharge.
- 3196. — Scope and extent of use in criminal prosecution.
 - (1). In general.
 - (2). By subject of records.
- 3197. — Background checks and inquiries.

212. INJUNCTION**XVIII. RECORDS.**(Cont'd)

- 3198. — Estoppel or waiver.
- 3199. — Proceedings and review.
- 3200. — In camera examination.
- 3201. Mental health records.
- 3202. Juvenile sex offenders.
- 3203. — In general.
- 3204. — Registration and notification.

212. INJUNCTION**SUBJECTS INCLUDED**

- General law and principles relating to permanent injunctions, preliminary or temporary injunctions and temporary restraining orders; their issuance, continuance, modification, termination, and enforcement, and proceedings relating thereto
- Liabilities for wrongful procurement of injunction, whether pursuant to or apart from bond or other security
- Grounds for, and construction, scope, and enforcement of, various particular injunctions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Abortion and birth control, injunctions relating to, see ABORTION AND BIRTH CONTROL
- Aliens, injunctions relating to detention, removal, and asylum, see ALIENS, IMMIGRATION, AND CITIZENSHIP
- Antitrust regulation, injunctions relating to, see ANTITRUST AND TRADE REGULATION
- Arbitration, injunctions to preclude or support, see ALTERNATIVE DISPUTE RESOLUTION
- Bankruptcy Code and bankruptcy court's equity powers, injunctions issued pursuant to, see BANKRUPTCY
- Banks, injunctions in actions involving, see FINANCE, BANKING, AND CREDIT
- Civil rights acts, injunctions issued pursuant to, see CIVIL RIGHTS

- Commodity futures regulation, injunctions relating to, see COMMODITY FUTURES TRADING REGULATION
- Consumer credit statutes, injunctions enforcing, see FINANCE, BANKING, AND CREDIT
- Consumer protection statutes, injunctions enforcing, see ANTITRUST AND TRADE REGULATION
- Copyright infringement, injunctions against, see COPYRIGHTS AND INTELLECTUAL PROPERTY
- Court of International Trade, injunctions granted by, see CUSTOMS DUTIES
- Easements, injunctions in proceedings to establish or protect, see EASEMENTS
- Ejectment actions, injunctions in, see EJECTMENT
- Eminent domain and inverse condemnation, injunctions relating to, see EMINENT DOMAIN
- Environmental protection regulations, injunctions enforcing, see ENVIRONMENTAL LAW
- Execution on judgments, injunctions to restrain, see CREDITORS' REMEDIES
- Fair Credit Reporting Act, injunctions issued pursuant to, see FINANCE, BANKING, AND CREDIT
- Gag orders in criminal and civil actions, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, and TRIAL
- Judgment, restraining enforcement of, see JUDGMENT
- Labor relations acts, injunctions enforcing, see LABOR AND EMPLOYMENT
- Liquor regulations, injunctions enforcing, see ALCOHOLIC BEVERAGES
- Mechanics' liens, enforcement or restraining enforcement of, see MECHANICS' LIENS
- Mining, including oil and gas production, injunctions relating to, see MINES AND MINERALS
- Mortgage foreclosures, injunctions relating to, see MORTGAGES AND DEEDS OF TRUST and CHATTEL MORTGAGES
- Nuisances, enjoining and abatement of, see NUISANCES
- Patents and patent infringement, injunctions relating to, see PATENTS

212. INJUNCTION

Prescription drugs and medical devices, injunctions in proceedings to approve, see **HEALTH**

Protective orders and prevention of mistreatment or abuse, see **PROTECTION OF ENDANGERED PERSONS** and **INFANTS**

Public records, injunctions in proceedings to disclose, see **RECORDS**

Quiet title actions, injunctions in, see **QUIETING TITLE**

Securities regulation, injunctions relating to, see **SECURITIES REGULATION**

Specific performance of contracts, injunctions relating to, see **SPECIFIC PERFORMANCE**

Tax assessment and collection, injunctions relating to, see **INTERNAL REVENUE** and **TAXATION**

Taxpayer suits to enjoin governmental action, see **COUNTIES, MUNICIPAL CORPORATIONS, STATES, TOWNS, and UNITED STATES**

Telecommunication regulation, injunctions relating to, see **TELECOMMUNICATIONS**

Trademarks, injunctions relating to, see **TRADEMARKS**

Trusts, injunctions in actions to establish or enforce, see **TRUSTS**

Unemployment compensation, injunctions relating to, see **UNEMPLOYMENT COMPENSATION**

Unfair trade practices statutes, injunctions enforcing, see **ANTITRUST AND TRADE REGULATION**

Wage and hour regulations, injunctions enforcing, see **LABOR AND EMPLOYMENT**

Wartime and national security measures, injunctions enforcing, see **WAR AND NATIONAL EMERGENCY**

Water ownership, supply, and regulation, injunctions relating to, see **WATER LAW**

Workers' compensation awards, injunctions against, see **WORKERS' COMPENSATION**

Zoning and land use regulation, injunctions relating to, see **ZONING AND PLANNING**

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL, ¶1001–1070.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1001–1030.

(B) FACTORS CONSIDERED IN GENERAL, ¶1031–1070.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL, ¶1071–1120.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1071–1090.

(B) FACTORS CONSIDERED IN GENERAL, ¶1091–1120.

III. TEMPORARY RESTRAINING ORDERS IN GENERAL, ¶1121–1150.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1121–1130.

(B) FACTORS CONSIDERED IN GENERAL, ¶1131–1150.

IV. PARTICULAR SUBJECTS OF RELIEF, ¶1151–1500.

(A) COURTS AND ACTIONS IN GENERAL, ¶1151–1180.

(B) ADMINISTRATIVE AGENCIES AND PROCEEDINGS IN GENERAL, ¶1181–1190.

(C) CRIMINAL MATTERS AND PROCEEDINGS, ¶1191–1210.

(D) PROPERTY IN GENERAL, ¶1211–1240.

(E) GOVERNMENTS, LAWS, AND REGULATIONS IN GENERAL, ¶1241–1260.

(F) GOVERNMENT PROPERTY, FACILITIES, FUNDS, AND REVENUE, ¶1261–1280.

(G) SOCIAL SECURITY, WELFARE, AND OTHER PUBLIC PAYMENTS, ¶1281–1300.

(H) EMPLOYMENT AND COMPENSATION, ¶1301–1310.

(I) EDUCATION, ¶1311–1340.

(J) ELECTIONS, VOTING, AND POLITICAL RIGHTS, ¶1341–1350.

(K) CONTRACTS, ¶1351–1360.

(L) TRADE OR BUSINESS, ¶1361–1390.

(M) ANIMALS AND PLANTS, ¶1391–1400.

(N) HEALTH, ¶1401–1410.

(O) MOTOR VEHICLES, ¶1411–1420.

(P) CARRIERS AND PUBLIC UTILITIES, ¶1421–1440.

(Q) FAMILIES AND CHILDREN, ¶1441–1450.

(R) TORT OR FINANCIAL LIABILITIES, ¶1451–1460.

212. INJUNCTION**IV. PARTICULAR SUBJECTS OF RELIEF—Cont'd**

(S) CORPORATIONS AND OTHER PRIVATE ORGANIZATIONS, ¶1461–1490.

(T) OTHER PARTICULAR MATTERS, ¶1491–1500.

V. ACTIONS AND PROCEEDINGS, ¶1501–1650.

(A) IN GENERAL, ¶1501–1520.

(B) PARTIES, ¶1521–1530.

(C) NOTICE, ¶1531–1540.

(D) PLEADING, ¶1541–1560.

(E) EVIDENCE, ¶1561–1580.

(F) TRIAL OR HEARING, ¶1581–1590.

(G) DETERMINATION, ¶1591–1600.

(H) COSTS AND FEES, ¶1601–1610.

(I) CONTINUING, MODIFYING, OR TERMINATING, ¶1611–1650.

VI. BONDS AND OTHER SECURITY, ¶1651–1710.

(A) REQUIREMENT IN GENERAL, ¶1651–1670.

(B) ENFORCEMENT AND LIABILITY, ¶1671–1680.

(C) ACTIONS ON BONDS, ¶1681–1710.

VII. VIOLATION AND ENFORCEMENT, ¶1711–1810.

(A) NATURE AND FACTORS OF ENFORCEMENT, ¶1711–1760.

(B) PROCEEDINGS FOR ENFORCEMENT, ¶1761–1810.

VIII. WRONGFUL INJUNCTION, ¶1811–1835.

(A) NATURE AND GROUNDS OF LIABILITY, ¶1811–1820.

(B) PROCEEDINGS FOR DAMAGES, ¶1821–1835.

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL.**(A) NATURE, FORM, AND SCOPE OF REMEDY.**

1001. In general.

1002. Nature of remedy in general.

1003. Purpose or function of remedy.

1004. Equitable nature of remedy.

1005. In personam nature of remedy.

1006. Prospective, preventive, or future-oriented nature of remedy.

1007. Extraordinary or unusual nature of remedy.

1008. Discretionary nature of remedy.

1009. — In general.

1010. — Abuse of discretion.

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL. (Cont'd)

1011. Prohibitory nature; preservation of status quo.

1012. Mandatory injunctions; restoration of status quo.

1013. Scope of relief in general.

1014. — In general.

1015. — Discretion as to scope of relief.

1016. — Specificity, vagueness, overbreadth, and narrowly-tailored relief.

1017. — Duration of relief.

1018. — Geographical scope of relief.

1019. Constitutional and statutory provisions.

1020. — In general.

1021. — Validity.

1022. — Construction in general.

1023. — Prospective or retroactive application.

1024. Preemption.

(B) FACTORS CONSIDERED IN GENERAL.

1031. In general.

1032. Grounds in general; multiple factors.

1033. Balancing or weighing factors; sliding scale.

1034. Actual success on merits.

1035. Clear, unequivocal or existing right to relief.

1036. Equitable considerations in general; fairness.

1037. — In general.

1038. — Balancing or weighing equities.

1039. Public interest considerations.

1040. Necessity and effect of statutory authorization.

1041. Injury, hardship, harm, or effect.

1042. — In general.

1043. — Unclear, unlikely, doubtful or speculative injury.

1044. — Clear, likely, threatened, anticipated, or intended injury.

1045. — Substantial nature of injury.

1046. — Irreparable injury.

1047. — Injury or inconvenience to defendant or respondent.

1048. — Injury or inconvenience to third persons.

1049. — Balancing or weighing hardship or harm.

212. INJUNCTION**I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL.(Cont'd)**

- 1050. Availability and adequacy of other remedies.
- 1051. — In general.
- 1052. — Remedies at law in general.
- 1053. — Adequacy of remedy at law.
- 1054. — Recovery of damages.
- 1055. — Insolvency or inability to pay.
- 1056. — Remedies by extraordinary writ.
- 1057. — Remedies by appeal or review.
- 1058. — Statutory remedies.
- 1059. — Administrative remedies.
- 1060. — Habeas corpus.
- 1061. Defenses or objections in general.
- 1062. Ease or difficulty of enforcement.
- 1063. Plaintiff's encouragement, acquiescence, or bad faith.
- 1064. Rights and defenses arising after commencement of action.
- 1065. Voluntary cessation or undertaking of conduct.
- 1066. Mootness and ripeness; ineffectual remedy.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL.**(A) NATURE, FORM, AND SCOPE OF REMEDY.**

- 1071. In general.
- 1072. Nature of remedy in general.
- 1073. Purpose or function in general.
- 1074. Preservation of status quo.
- 1075. Extraordinary or unusual nature of remedy.
- 1076. Categories disfavored or subject to heavier burden.
- 1077. Discretionary nature of remedy.
- 1078. — In general.
- 1079. — Abuse of discretion.
- 1080. Mandatory preliminary injunctions.
- 1081. Scope and duration of relief.

(B) FACTORS CONSIDERED IN GENERAL.

- 1091. In general.
- 1092. Grounds in general; multiple factors.
- 1093. Balancing or weighing factors; sliding scale.
- 1094. Entitlement to relief.
- 1095. — In general.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL.(Cont'd)

- 1096. — Likelihood of success on merits.
- 1097. — Serious or substantial question on merits.
- 1098. Effect of granting full relief on merits.
- 1099. Equitable considerations in general.
- 1100. Public interest considerations.
- 1101. Injury, hardship, harm, or effect.
- 1102. — In general.
- 1103. — Unclear, unlikely, doubtful or speculative injury.
- 1104. — Clear, likely, threatened, anticipated, or intended injury.
- 1105. — Substantial nature of injury.
- 1106. — Irreparable injury.
- 1107. — Injury or inconvenience to defendant or respondent.
- 1108. — Injury or inconvenience to third persons.
- 1109. — Balancing or weighing hardship or injury.
- 1110. Availability and adequacy of other remedies.
- 1111. — In general.
- 1112. — Remedies at law in general.
- 1113. — Adequacy of remedy at law.
- 1114. — Recovery of damages.
- 1115. Defenses and objections.
- 1116. — In general.
- 1117. — Mootness and ripeness; ineffectual remedy.

III. TEMPORARY RESTRAINING ORDERS IN GENERAL.**(A) NATURE, FORM, AND SCOPE OF REMEDY.**

- 1121. In general.
- 1122. Nature of remedy in general.
- 1123. Purpose or function in general.
- 1124. Preservation of status quo.
- 1125. Extraordinary or unusual nature of remedy.
- 1126. Discretionary nature of remedy.
- 1127. Scope and duration of relief.
- 1128. Relation or conversion to preliminary injunction.

(B) FACTORS CONSIDERED IN GENERAL.

- 1131. In general.

212. INJUNCTION**III. TEMPORARY RESTRAINING ORDERS
IN GENERAL.(Cont'd)**

- 1132. Grounds in general; multiple factors.
- 1133. Balancing or weighing factors; sliding scale.
- 1134. Entitlement to relief; likelihood of success.
- 1135. Equitable considerations in general.
- 1136. Public interest considerations.
- 1137. Injury, hardship, harm, or effect.
- 1138. — In general.
- 1139. — Irreparable harm.
- 1140. Availability or adequacy of other remedies.
- 1141. — In general.
- 1142. — Adequacy of remedy at law.
- 1143. Defenses and objections.
- 1144. — In general.
- 1145. — Mootness and ripeness; ineffectual remedy.

IV. PARTICULAR SUBJECTS OF RELIEF.**(A) COURTS AND ACTIONS IN GENERAL.**

- 1151. In general.
- 1152. Commencement and prosecution in general.
- 1153. — In general.
- 1154. — Confession of judgment as prerequisite.
- 1155. — Grounds in general.
- 1156. — Defenses available in action sought to be enjoined.
- 1157. — Fraud, misrepresentation, or mistake.
- 1158. — Payment, discharge, or set-off.
- 1159. — Proceedings for recovery of real property.
- 1160. — Particular proceedings or remedies in actions.
- 1161. Actions or proceedings in same court.
- 1162. Actions or proceedings in other courts.
- 1163. — In general.
- 1164. — Federal/state issues.
- 1165. Actions or proceedings in other states.
- 1166. Actions or proceedings in other countries.
- 1167. Multiple, successive, or duplicative suits in general.

**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1168. Abusive, vexatious, or harassing litigation.
- 1169. — In general.
- 1170. — Particular cases.
- 1171. Enjoining defenses to actions.
- 1172. Judgments, and enforcement thereof.
- 1173. — In general.
- 1174. — Foreign judgments.

**(B) ADMINISTRATIVE AGENCIES AND
PROCEEDINGS IN GENERAL.**

- 1181. In general.
- 1182. Investigations.
- 1183. Rules and regulations.
- 1184. Hearings and adjudications.
- 1185. Judicial review.

(C) CRIMINAL MATTERS AND PROCEEDINGS.

- 1191. In general.
- 1192. Acts of law enforcement officers in general.
- 1193. Commission of crime in general.
- 1194. Particular criminal acts.
- 1195. Criminal conspiracies and combinations.
- 1196. Prosecution of criminal laws.
- 1197. — In general.
- 1198. — On ground of invalidity.
- 1199. — Particular prosecutions.
- 1200. Prisons and prisoners.
- 1201. — In general.
- 1202. — Placement and transfer in general.
- 1203. — Health, medical, and nutritional issues.
- 1204. — Mail and other communications.
- 1205. — Access to courts and legal assistance.
- 1206. — Duration of confinement and release.
- 1207. — Restrictions on litigation and filings.

(D) PROPERTY IN GENERAL.

- 1211. In general.
- 1212. Personal property in general.
- 1213. Injury to personal property.
- 1214. Real property in general.

212. INJUNCTION**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1215. Sale, mortgage, or other disposition.
- 1216. Trespass or other injury to real property.
- 1217. — In general.
- 1218. — Necessity and sufficiency of title or possession.
- 1219. — Encroachments by buildings, fences, and other structures.
- 1220. — Removal of or injury to timber or crops.
- 1221. Covenants as to use of property.
- 1222. — In general.
- 1223. — Race, age, and other class-based restrictions.
- 1224. — Alcoholic beverages.
- 1225. — Animals and pets.
- 1226. — Parking vehicles, trailers, or boats.
- 1227. — Business, commercial, or industrial uses.
- 1228. — Buildings and other structures.
- 1229. — Fences and hedges.
- 1230. — Other particular uses and restrictions.
- 1231. Freezing or protecting assets pending litigation.
- 1232. Fraudulent conveyances and transfers.
- 1233. Building and safety codes.
- 1234. Forfeitures and proceedings therefor.
- 1235. Landlord and tenant.
- 1236. Wills, trusts, probate, inheritance, and dower.

**(E) GOVERNMENTS, LAWS, AND REGULATIONS
IN GENERAL.**

- 1241. In general.
- 1242. Powers and actions in general.
- 1243. Injunctions sought by government in general.
- 1244. — In general.
- 1245. — Police power; health, safety, and welfare.
- 1246. Injunctions against government entities in general.
- 1247. Injunctions against government officials in general.
- 1248. Meetings and proceedings in general.

**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1249. Passage of ordinances and laws in general.
- 1250. Injunctions to enforce laws and regulations in general.
- 1251. Injunctions against enforcement of laws and regulations.
- 1252. — In general.
- 1253. — On ground of invalidity.
- 1254. Creation, alteration, and regulation of government entities.
- 1255. Public improvements and assessments therefor; urban renewal.

**(F) GOVERNMENT PROPERTY, FACILITIES,
FUNDS, AND REVENUE.**

- 1261. In general.
- 1262. Sale, lease, or other disposition.
- 1263. Control and use in general.
- 1264. Trespass or other injury to public property.
- 1265. Transportation in general.
- 1266. Streets, highways, sidewalks, and alleys.
- 1267. Bridges.
- 1268. Parks and forests.
- 1269. Public funds; grants and loans.
- 1270. Public services.
- 1271. Public housing.
- 1272. Public revenue; bonds and taxation.

**(G) SOCIAL SECURITY, WELFARE, AND
OTHER PUBLIC PAYMENTS.**

- 1281. In general.
- 1282. Social Security.
- 1283. — In general.
- 1284. — Old age and survivor benefits.
- 1285. — Supplemental security income.
- 1286. — Disability benefits.
- 1287. Aid to children and families.
- 1288. Food and nutritional benefits.
- 1289. Health care; Medicare and Medicaid.
- 1290. Housing subsidies.

(H) EMPLOYMENT AND COMPENSATION.

- 1301. In general.
- 1302. Adverse employment actions.
- 1303. Compensation and benefits.
- 1304. Public employees and officials.

212. INJUNCTION**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1305. Judges and other judicial officers or employees.
- 1306. Employment of physicians; hospital staff privileges.

(I) EDUCATION.

- 1311. In general.
- 1312. Public elementary and secondary education.
- 1313. — In general.
- 1314. — School districts and boards in general.
- 1315. — Establishment and closing of schools.
- 1316. — Administration of schools; property, contracts, and liabilities.
- 1317. — School funding and financing; taxation.
- 1318. — Employment matters.
- 1319. — Students.
- 1320. Private elementary and secondary schools.
- 1321. Home schooling and compulsory attendance issues.
- 1322. Post-secondary education.
- 1323. — In general.
- 1324. — Governing bodies and officials.
- 1325. — Establishment and closing of institutions.
- 1326. — Administration; property, contracts, and liabilities.
- 1327. — Funding and financing.
- 1328. — Employment matters; tenure.
- 1329. — Students.
- 1330. Miscellaneous educational institutions.
- 1331. Athletics.
- 1332. Discrimination; segregation and desegregation.

(J) ELECTIONS, VOTING, AND POLITICAL RIGHTS.

- 1341. In general.
- 1342. Political parties and organizations.
- 1343. Voters, registration, and eligibility.
- 1344. Nominations and primary elections.
- 1345. Candidates and ballot access.
- 1346. Conduct of elections.
- 1347. Redistricting and reapportionment.

**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1348. Initiative, referendum, and recall.
- 1349. Contributions and expenditures.

(K) CONTRACTS.

- 1351. In general.
- 1352. Breaches in general.
- 1353. Franchise agreements.
- 1354. Public contracts.
- 1355. — In general.
- 1356. — Award of contract; bids and bidders.

(L) TRADE OR BUSINESS.

- 1361. In general.
- 1362. Licenses, permits, and certifications in general.
- 1363. Injury to or restraint of trade or business in general.
- 1364. Charges and prices in general.
- 1365. Manufacturing.
- 1366. Sales and marketing in general.
- 1367. Accountants.
- 1368. Agriculture.
- 1369. Architects and engineers.
- 1370. Attorneys; unauthorized practice of law.
- 1371. Financial institutions, transactions, and services.
See also FINANCE, BANKING, AND CREDIT.
- 1372. Food and beverages; restaurants.
- 1373. Funeral directors, cemeteries, and related occupations.
- 1374. Gambling and gaming.
- 1375. Hospitals, pharmacies, and health care professionals.
- 1376. Hotels, motels, and other lodging.
- 1377. Insurance.
- 1378. Intoxicating liquors.
- 1379. Public amusement and entertainment.
- 1380. Publishing, journalism, and bookselling.
- 1381. Sexually-oriented businesses; obscenity.
- 1382. Other particular businesses or occupations.
- 1383. Non-competition and non-solicitation issues.
- 1384. Disclosure or use of trade secrets or confidential information.

212. INJUNCTION**(M) ANIMALS AND PLANTS.**

- 1391. In general.
- 1392. Domestic animals, livestock, and pets.
- 1393. Game and hunting.
- 1394. Fish and fishing.

(N) HEALTH.

- 1401. In general.
- 1402. Mental health.
- 1403. — In general.
- 1404. — Commitment and confinement.
- 1405. — Sexual predators and offenders.
- 1406. — Chemical dependency.

(O) MOTOR VEHICLES.

- 1411. In general.
- 1412. Licensing and registration of vehicles.
- 1413. Drivers' licenses.
- 1414. Alcohol and drug-related issues; testing.

(P) CARRIERS AND PUBLIC UTILITIES.

- 1421. In general.
- 1422. Charges and prices in general.
- 1423. Airports and aviation.
- 1424. Railroads.
- 1425. Motor carriers; trucking.
- 1426. Public transit systems.
- 1427. Buses and shuttle services.
- 1428. Taxicabs and limousines.
- 1429. Ferries.
- 1430. Towing and wrecking services.
- 1431. Telecommunications.
- 1432. Gas and electricity.
- 1433. Water, sewer, and irrigation.
- 1434. Garbage collection and hauling.

(Q) FAMILIES AND CHILDREN.

- 1441. In general.
- 1442. Marriage and divorce.
- 1443. Parent and child in general.
- 1444. Child custody, visitation, and support.
- 1445. Child care in general.
- 1446. Foster care.
- 1447. Juvenile justice.

(R) TORT OR FINANCIAL LIABILITIES.

- 1451. In general.
- 1452. Debtor and creditor in general.

**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1453. Damages in general.
- 1454. Liens and security interests.
- 1455. Interference with contractual or business relations.
- 1456. Libel and slander.
- 1457. Threats, harassment, and rights of privacy.
- 1458. Protection of name or likeness.

**(S) CORPORATIONS AND OTHER
PRIVATE ORGANIZATIONS.**

- 1461. In general.
- 1462. Corporations and business organizations in general.
- 1463. Infringement of entity's franchise, rights, or name.
- 1464. Exercise or misuse of corporate franchise or powers; acts ultra vires.
- 1465. Management of affairs or business in general.
- 1466. Capital and stock.
- 1467. Shareholders and members.
- 1468. Directors, officers, and agents.
- 1469. Acquisition and disposition of property; mortgages and security agreements.
- 1470. Bonds, notes, and debentures.
- 1471. Mergers and acquisitions; anti-take-over measures.
- 1472. Insolvency, dissolution, and forfeiture of franchise.
- 1473. Foreign corporations.
- 1474. Non-profit corporations in general.
- 1475. Unincorporated business organizations.
- 1476. Limited liability companies.
- 1477. Partnerships.
- 1478. Common interest communities.
- 1479. Charitable organizations.
- 1480. Beneficial and fraternal associations; clubs.
- 1481. Religious organizations.

(T) OTHER PARTICULAR MATTERS.

- 1491. In general.
- 1492. Armed services and national security.
- 1493. Indians and tribal matters.
- 1494. Searches and seizures.
- 1495. Racketeering and criminal organizations.

212. INJUNCTION**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1496. Aliens, immigration, and citizenship.
- 1497. Weapons and explosives.

V. ACTIONS AND PROCEEDINGS.**(A) IN GENERAL.**

- 1501. In general.
- 1502. Nature and form.
- 1503. What law governs.
- 1504. Authority of court; jurisdiction and venue.
- 1505. Persons entitled to apply; standing.
- 1506. Conditions precedent.
- 1507. — In general.
- 1508. — Underlying cause of action.
- 1509. — Exhaustion of remedies.
- 1510. — Performance of disputed obligation; tender.
- 1511. Time for proceedings.
- 1512. — In general.
- 1513. — Prematurity.
- 1514. — Laches.
- 1515. — Other particular cases.

(B) PARTIES.

- 1521. In general.
- 1522. Plaintiffs or applicants.
- 1523. Defendants or respondents.
- 1524. Necessary and indispensable parties.
- 1525. New parties; intervention and joinder.

(C) NOTICE.

- 1531. In general.
- 1532. Process and service.
- 1533. Appearance.
- 1534. Restrictions on litigants and filings.
- 1535. Other particular cases.
- 1536. Temporary restraining orders.

(D) PLEADING.

- 1541. In general.
- 1542. Petition, complaint, or application.
- 1543. — In general.
- 1544. — Necessity.
- 1545. — Presumption of truth of allegations.
- 1546. — Sufficiency in general.
- 1547. — Sufficiency, particular cases.

V. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1548. Answer or response, and subsequent pleadings.
- 1549. Demurrer.
- 1550. Amended and supplemental pleadings.
- 1551. Verification.
- 1552. Issues, proof, and variance.

(E) EVIDENCE.

- 1561. In general.
- 1562. Pleadings and affidavits as evidence.
- 1563. Presumptions and burden of proof.
- 1564. Admissibility.
- 1565. — In general.
- 1566. — Hearsay.
- 1567. Weight and sufficiency.
- 1568. — In general.
- 1569. — Standard of proof in general.
- 1570. — Prima facie showing.
- 1571. — Preponderance of evidence.
- 1572. — Clear showing or proof.
- 1573. — Clear and convincing evidence.
- 1574. — Particular cases.

(F) TRIAL OR HEARING.

- 1581. In general.
- 1582. Right or necessity.
- 1583. Waiver of right.
- 1584. Hearing procedure.
- 1585. Consolidation issues.
- 1586. Questions of law or fact.
- 1587. Instructions.

(G) DETERMINATION.

- 1591. In general.
- 1592. Dismissal before hearing.
- 1593. Scope of inquiry and matters considered.
- 1594. Form and requisites.
- 1595. Conditions.
- 1596. Findings and conclusions.
- 1597. Award of damages and other monetary relief.
- 1598. Operation and effect.
- 1599. Successive injunctions or applications therefor.

212. INJUNCTION**(H) COSTS AND FEES.**

- 1601. In general.
- 1602. Attorney fees.

(I) CONTINUING, MODIFYING, OR TERMINATING.

- 1611. In general.
- 1612. Authority and discretion of court in general.
- 1613. Continuing or extending injunction.
- 1614. — In general.
- 1615. — Authority and discretion of court.
- 1616. — Grounds in general.
- 1617. — Particular cases.
- 1618. Modifying or staying injunction.
- 1619. — In general.
- 1620. — Authority and discretion of court.
- 1621. — Grounds in general.
- 1622. — Particular cases.
- 1623. Terminating, vacating, or dissolving injunction.
- 1624. — In general.
- 1625. — Authority and discretion of court.
- 1626. — Grounds or cause in general.
- 1627. — Particular cases.
- 1628. Motions and proceedings.
- 1629. — In general.
- 1630. — Successive motions or applications.
- 1631. — Persons entitled to bring motion.
- 1632. — Time for proceedings.
- 1633. — Notice.
- 1634. — Application, bill or original papers.
- 1635. — Effect of answer.
- 1636. — Evidence and affidavits.
- 1637. — Hearing and determination.
- 1638. — Effect of determination.
- 1639. — Reinstatement or revival.
- 1640. — Bond or other security.
- 1641. — Costs and fees.

VI. BONDS AND OTHER SECURITY.**(A) REQUIREMENT IN GENERAL.**

- 1651. In general.
- 1652. Purpose and function.
- 1653. Necessity and waiver in general.
- 1654. Discretion of court.
- 1655. Form and requisites.
- 1656. Grounds and considerations in general.

VI. BONDS AND OTHER SECURITY.(Cont'd)

- 1657. Particular cases.
- 1658. Amount.
- 1659. Deposit or payment.
- 1660. Proceedings.

(B) ENFORCEMENT AND LIABILITY.

- 1671. In general.
- 1672. Grounds and considerations in general.
- 1673. Particular cases.
- 1674. Release, discharge, or waiver.
- 1675. Extent and amount of liability.

(C) ACTIONS ON BONDS.

- 1681. In general.
- 1682. Nature and form of remedy.
- 1683. Right of action; standing.
- 1684. Conditions precedent.
- 1685. Defenses.
- 1686. Jurisdiction and venue.
- 1687. Time for proceedings.
- 1688. Parties.
- 1689. Process and appearance.
- 1690. Pleading or application.
- 1691. Evidence.
- 1692. Trial or hearing, and determination.
- 1693. Damages.
- 1694. — In general.
- 1695. — Elements and factors in general.
- 1696. — Measure and amount.
- 1697. — Nominal damages.
- 1698. — Punitive or exemplary damages.
- 1699. — Costs and fees in general.
- 1700. — Costs and fees incurred on main issues.
- 1701. — Costs and fees on motion to continue or dissolve.
- 1702. — Costs and fees in proceedings to determine damage.
- 1703. Appeal and error.
- 1704. Costs and fees.

VII. VIOLATION AND ENFORCEMENT.**(A) NATURE AND FACTORS OF ENFORCEMENT.**

- 1711. In general.
- 1712. Power to enforce and punish.
- 1713. Discretion of court.
- 1714. Nature of remedy in general.
- 1715. Contempt.

212. INJUNCTION**VII. VIOLATION AND ENFORCEMENT.(Cont'd)**

- 1716. — In general.
- 1717. — Civil or criminal nature.
- 1718. Duty to comply or obey.
- 1719. Elements of violation.
- 1720. — In general.
- 1721. — Knowledge and intent.
- 1722. Construction of injunction.
- 1723. Defenses and justification.
- 1724. — In general.
- 1725. — Lack of knowledge or notice.
- 1726. — Ability to obey.
- 1727. — Good faith.
- 1728. — Advice of counsel.
- 1729. — Ambiguity or vagueness of injunction.
- 1730. — Moot, ineffectual, or expired injunction.
- 1731. — Pendency of proceedings for review.
- 1732. — Illegality or invalidity of injunction.
- 1733. Acts constituting violation.
- 1734. — In general.
- 1735. — Courts and actions in general.
- 1736. — Administrative agencies and proceedings.
- 1737. — Criminal matters and proceedings; prisons.
- 1738. — Property in general.
- 1739. — Governments, laws, and regulations in general.
- 1740. — Government property, facilities, funds, and revenue.
- 1741. — Social security, welfare, and other public payments.
- 1742. — Employment and compensation.
- 1743. — Education.
- 1744. — Elections, voting, and political rights.
- 1745. — Contracts.
- 1746. — Trade or business.
- 1747. — Animals and plants.
- 1748. — Health.
- 1749. — Motor vehicles.
- 1750. — Carriers and public utilities.
- 1751. — Families and children.
- 1752. — Tort or financial liabilities.

VII. VIOLATION AND ENFORCEMENT.(Cont'd)

- 1753. — Corporations and other private organizations.
- 1754. — Other particular matters.
- (B) PROCEEDINGS FOR ENFORCEMENT.**
- 1761. In general.
- 1762. Authority of court; jurisdiction and venue.
- 1763. Mode of enforcement and proceedings in general.
- 1764. Persons entitled to enforce.
- 1765. Persons liable.
- 1766. — In general.
- 1767. — Non-parties in general.
- 1768. — Aiding, abetting, or encouraging.
- 1769. — Successors, assigns, and persons in privity.
- 1770. — Organizations and associations in general.
- 1771. — Corporations, officers, and shareholders.
- 1772. — Government bodies and officials.
- 1773. — Attorneys.
- 1774. — Other particular cases.
- 1775. Conditions precedent.
- 1776. Time for proceedings.
- 1777. Parties.
- 1778. Notice or process.
- 1779. Pleadings in general.
- 1780. Motions and orders to show cause.
- 1781. Evidence.
- 1782. — In general.
- 1783. — Presumptions and burden of proof.
- 1784. — Admissibility.
- 1785. — Weight and sufficiency.
- 1786. Hearing or trial.
- 1787. — In general.
- 1788. — Necessity for hearing.
- 1789. — Conduct of hearing.
- 1790. Judgment and determination.
- 1791. — In general.
- 1792. — Findings, reasons, and record.
- 1793. — Effect and operation.
- 1794. Mode and extent of punishment.
- 1795. — In general.
- 1796. — Dismissal of or other limitation on litigation.
- 1797. — Fines and other monetary relief.

212. INJUNCTION**VII. VIOLATION AND ENFORCEMENT.**(Cont'd)

- 1798. — Incarceration.
- 1799. Review.
- 1800. Costs and fees.

VIII. WRONGFUL INJUNCTION.**(A) NATURE AND GROUNDS OF LIABILITY.**

- 1811. In general.
- 1812. Wrongful or improper issuance in general.
- 1813. Damages on dissolution in general.
- 1814. Viability, outcome, or scope of underlying action.
- 1815. Malice, bad faith, or lack of probable cause.
- 1816. Effect of bond or lack thereof; exclusivity of remedy.
- 1817. Liability in particular cases.
- 1818. Liability and immunity of government entities.

(B) PROCEEDINGS FOR DAMAGES.

- 1821. In general.
- 1822. Nature and form of remedy.
- 1823. Time for proceedings.
- 1824. Parties and persons entitled.
- 1825. Pleadings and suggestions of damages.
- 1826. Evidence.
- 1827. Trial and determination.
- 1828. Damages recoverable.
- 1829. — In general.
- 1830. — Measure and items in general.
- 1831. — Mitigation of damages.
- 1832. — Costs and fees in underlying action.
- 1833. — Amount.
- 1834. — Punitive damages.
- 1835. Costs and fees in wrongful injunction action.

213. INNKEEPERS**SUBJECTS INCLUDED**

Regulation of inns, hotels, boarding houses, lodging houses, and all houses furnishing

for compensation accommodation as a temporary home

Mutual rights, duties, and liabilities of keepers of such houses and their guests, boarders or lodgers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Discrimination by reason of race, color, etc., see CIVIL RIGHTS

Intoxicants, regulation of sale, see ALCOHOLIC BEVERAGES

Trailer camps and the like, see AUTOMOBILES, LICENSES

1. Power to regulate.
2. Statutory and municipal regulations.
3. Who are innkeepers.
4. Licenses and taxes.
5. Buildings.
6. Conduct of business.
7. Duty to receive guests.
8. Who are guests, boarders, or lodgers.
9. Duty to furnish accommodations.
10. Injury to person of guest.
- 10.20. — In general.
- 10.21. — What law governs.
- 10.22. — Persons liable in general; franchisors.
- 10.23. — Acts of employees, other guests, or third persons.
 - (1). In general.
 - (2). Protection against assault and other crimes.
- 10.24. — Defects in premises or appliances in general.
- 10.25. — Defective floors, stairs, or passageways, in general.
- 10.26. — Bathrooms.
- 10.27. — Recreational areas and activities; swimming pools.
- 10.28. — Fire.
- 10.29. — Contributory and comparative fault; assumption of risk.
- 10.30. — Actions in general.
- 10.31. — Pleading.
- 10.32. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Res ipsa loquitur.
- 10.33. — Admissibility of evidence.

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- 10.34. — Weight and sufficiency of evidence.
- (1). In general.
 - (2). Protection against assault and other crimes.
 - (3). Defects in premises or appliances in general.
 - (4). Defective floors, stairs, or passageways, in general.
 - (5). Bathrooms.
 - (6). Recreational areas and activities; swimming pools.
 - (7). Fire.
 - (8). Contributory and comparative fault; assumption of risk.
- 10.35. — Questions for jury.
- (1). In general.
 - (2). Protection against assault and other crimes.
 - (3). Defects in premises or appliances in general.
 - (4). Defective floors, stairs, or passageways, in general.
 - (5). Bathrooms.
 - (6). Recreational areas and activities; swimming pools.
 - (7). Fire.
 - (8). Contributory and comparative fault; assumption of risk.
- 10.36. — Instructions.
- (1). In general.
 - (2). Protection against assault and other crimes.
 - (3). Defects in premises or appliances in general.
 - (4). Defective floors, stairs, or passageways, in general.
 - (5). Bathrooms.
 - (6). Recreational areas and activities; swimming pools.
 - (7). Fire.
 - (8). Contributory and comparative fault; assumption of risk.
 - (9). Presumptions and burden of proof; res ipsa loquitur.
11. Loss of or injury to property of guest.
- (5). In general.
 - (1). Nature and extent of liability in general.
 - (2). Relation of parties.

- (3). Care required of innkeeper.
 - (4). Loss of or injury to property by servants.
 - (5). Loss of or injuries to animals.
 - (6). Property for which innkeeper is liable.
 - (7). Rules and regulations.
 - (8). Property transported to and from depot.
 - (9). Place of leaving property.
 - (10). Contributory negligence.
 - (11). Statutes limiting liability.
 - (12). Actions.
12. Compensation.
13. Lien.
14. Penalties for violations of regulations.
- 14.1. Injuries to third persons.
- 14.5. Liabilities of guests for injuries.
15. Offenses by innkeepers.
16. Offenses by guests, boarders, or lodgers.

216. INSPECTION**SUBJECTS INCLUDED**

Examination and certification of quality, etc., of articles of merchandise by public authority, to determine and assure their fitness for use, commerce, etc., in general

More particularly such inspection for prevention of fraud

Nature and scope of power to make such examination

Constitutional and statutory provisions relating thereto

Validity, construction, operation and effect of inspection laws

Proceedings for their application and enforcement

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Food, regulations for securing wholesomeness and purity, see FOOD, ADULTERATION

Health regulations, see HEALTH

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Municipalities' powers in respect of inspection, see MUNICIPAL CORPORATIONS

Procedure—

Discovery and inspection of writings and other matters, see CRIMINAL LAW, PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE

Physical examination of person, see DAMAGES, PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE

Jury, inspection or view by, see TRIAL, EMINENT DOMAIN

1. Power to make regulations.
2. Constitutional and statutory provisions.
3. Subjects of inspection in general.
4. Inspection officers.
5. Mode of inspection in general.
6. Fees.
7. Violations of inspection laws.

217. INSURANCE**SUBJECTS INCLUDED**

Regulation and conduct of the business of insurance by individual underwriters or corporations, mutual or cooperative associations, and insurance agents or brokers

Organization, powers and liabilities of insurance companies and associations, and rights and liabilities of their members, officers, and agents

Contracts or policies of insurance and rights, liabilities, and remedies incident thereto

Insurance-related regulation of health maintenance organizations, preferred provider organizations, and related entities, as well as coverage and benefits provided by such entities

Patient compensation funds, and other excess malpractice liability funds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty, choice of law and jurisdiction, see ADMIRALTY ¶1.20(2), 10(4)

Annuities, see ANNUITIES

Antitrust, see ANTITRUST AND TRADE REGULATION

Automobile accident indemnity funds, victims' recovery from, see AUTOMOBILES V(C)

Automobile no-fault law, effect on tort recovery, see AUTOMOBILES V(D)

Declaratory judgment, see DECLARATORY JUDGMENT

Deposit insurance, see FINANCE, BANKING, AND CREDIT IX

Employee welfare benefit plans, administration of and procedures related to, see LABOR AND EMPLOYMENT

Federal old age, survivors, and disability benefits, see SOCIAL SECURITY

Interpleader, see INTERPLEADER

Liability of health maintenance organizations, preferred provider organizations, and related entities, for malpractice and other torts, see HEALTH

Medicare and Medicaid, see HEALTH

Military personnel and their families, plans affecting (e.g. Servicemen's group life insurance, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), war risk insurance), see ARMED SERVICES ¶50, 55–83

Relations between health care professionals and health maintenance organizations, preferred provider organizations, and related entities, see HEALTH

Specific performance, see SPECIFIC PERFORMANCE ¶78

Student loan insurance, see EDUCATION ¶1241

Sureties, see PRINCIPAL AND SURETY

Unemployment insurance, see UNEMPLOYMENT COMPENSATION

Workers' compensation insurance, see WORKERS' COMPENSATION

I. IN GENERAL; NATURE OF INSURANCE, ¶1000–1015.

II. REGULATION IN GENERAL, ¶1020–1076.

(A) IN GENERAL, ¶1020.

(B) FEDERAL AGENCIES AND REGULATION, ¶1021.

(C) STATE AGENCIES AND REGULATION, ¶1022–1076.

III. WHAT LAW GOVERNS, ¶1080–1117(4).

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- III. WHAT LAW GOVERNS—Cont'd
 - (A) CHOICE OF LAW, ☞1080–1092.
 - (B) PREEMPTION; APPLICATION OF STATE OR FEDERAL LAW, ☞1100–1117(4).
- IV. INSURANCE COMPANIES AND RELATED ENTITIES, ☞1120–1325.
 - (A) DOMESTIC COMPANIES IN GENERAL, ☞1120–1162.
 - (B) FOREIGN COMPANIES, ☞1163–1172.
 - (C) ALIEN COMPANIES, ☞1173–1182.
 - (D) SPECIAL TYPES OF ENTITIES, ☞1183–1325.
- V. SURPLUS LINES, ☞1330–1349.
- VI. FINANCIAL IMPAIRMENT, ☞1350–1421.
 - (A) IN GENERAL, ☞1350–1377.
 - (B) PROCEEDINGS, ☞1378–1401.
 - (C) SUPERVISORS, LIQUIDATORS, CONSERVATORS, REHABILITATORS OR RECEIVERS, ☞1402–1411.
 - (D) CLAIMS, ☞1412–1421.
- VII. GUARANTY FUNDS OR ASSOCIATIONS, ☞1470–1512.
 - (A) IN GENERAL, ☞1470.
 - (B) ADMINISTRATION, ☞1471–1481.
 - (C) MEMBERSHIP, ☞1482–1485.
 - (D) CLAIMS AND PROCEEDINGS, ☞1486–1512.
- VIII. UNDERWRITING, ☞1515–1548(3).
- IX. SALES, MARKETING AND ADVERTISING PRACTICES, ☞1560–1578.
- X. PRIVACY OF INFORMATION, ☞1580–1602.
- XI. AGENTS AND AGENCY, ☞1604–1692.
 - (A) IN GENERAL, ☞1604–1610.
 - (B) LICENSES AND PERMITS; REGULATION IN GENERAL, ☞1611–1624.
 - (C) AGENTS FOR INSURERS, ☞1625–1654.
 - (D) AGENTS FOR APPLICANTS OR INSURED, ☞1655–1674.
 - (E) THIRD PARTY ADMINISTRATORS, ☞1675–1692.
- XII. PROCUREMENT OF INSURANCE BY PERSONS OTHER THAN AGENTS, ☞1701–1704.
- XIII. CONTRACTS AND POLICIES, ☞1710–1996.
 - (A) IN GENERAL, ☞1710–1728.
 - (B) FORMATION, ☞1729–1767.
 - (C) FORMAL REQUISITES, ☞1768–1778.

- XIII. CONTRACTS AND POLICIES —Cont'd
 - (D) INSURABLE INTEREST, ☞1779–1795.
 - (E) ESTOPPEL AND WAIVER, ☞1796–1801.
 - (F) RATIFICATION, ☞1802–1804.
 - (G) RULES OF CONSTRUCTION, ☞1805–1863.
 - (H) RELATIONS BETWEEN PARTIES; IMPLIED TERMS, ☞1864–1867.
 - (I) LOANS ON POLICIES, ☞1868.
 - (J) MODIFICATION OF POLICIES, ☞1869–1881.
 - (K) REFORMATION, ☞1882–1893(2).
 - (L) RENEWAL, ☞1894–1907.
 - (M) CONVERSION, ☞1908–1911.
 - (N) CANCELLATION OR REVOCATION BY INSURER, ☞1912–1940.
 - (O) SURRENDER OR TERMINATION BY, OR ON BEHALF OF, INSURED, ☞1941–1961.
 - (P) TERMINATION BY AGREEMENT, ☞1962.
 - (Q) REINSTATEMENT OR REVOCATION OF CANCELLATION, ☞1964–1966.
 - (R) RESCISSION FOR FRAUD OR MISTAKE, ☞1967–1970.
 - (S) TRANSFERS OF POLICIES, ☞1971–1996.
- XIV. PREMIUMS, ☞2000–2087.
 - (A) IN GENERAL, ☞2000.
 - (B) OBLIGATION TO PAY, ☞2001–2002.
 - (C) PERSONS LIABLE, ☞2003–2004.
 - (D) AMOUNTS PAYABLE, ☞2005–2013.
 - (E) PAYMENT, ☞2014–2031.
 - (F) DEFAULT OR FAILURE TO PAY, ☞2032–2061.
 - (G) REFUND OR RECOVERY OF PREMIUMS PAID, ☞2062–2070.
 - (H) PREMIUM FINANCING ARRANGEMENTS, ☞2072–2078.
 - (I) ASSESSMENTS OR DUES, ☞2079–2087.
- XV. COVERAGE—IN GENERAL, ☞2090–2120.
- XVI. COVERAGE—PROPERTY INSURANCE, ☞2125–2256.
 - (A) IN GENERAL, ☞2125–2202.
 - (B) CROP INSURANCE, ☞2203–2208.
 - (C) FLOOD INSURANCE, ☞2209–2213.
 - (D) OCEAN MARINE INSURANCE, ☞2214–2256.
- XVII. COVERAGE—LIABILITY INSURANCE, ☞2260–2399.

217. INSURANCE**XVII. COVERAGE—LIABILITY INSURANCE—Cont'd**

- (A) IN GENERAL, ⚡2260–2293.
- (B) COVERAGE FOR PARTICULAR LIABILITIES, ⚡2294–2399.

XVIII. COVERAGE—FIDELITY AND GUARANTY INSURANCE, ⚡2400–2413.**XIX. COVERAGE—LIFE INSURANCE, ⚡2420–2446.****XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE, ⚡2450–2608.**

- (A) IN GENERAL, ⚡2450.
- (B) MEDICAL INSURANCE, ⚡2451–2533.
- (C) DISABILITY INSURANCE, ⚡2534–2579.
- (D) ACCIDENT INSURANCE, ⚡2580–2608.

XXI. COVERAGE—TITLE INSURANCE, ⚡2610–2640.**XXII. COVERAGE—AUTOMOBILE INSURANCE, ⚡2645–2908.**

- (A) IN GENERAL, ⚡2645–2695.
- (B) PROPERTY COVERAGE, ⚡2696–2733.
- (C) LIABILITY COVERAGE, ⚡2734–2771.
- (D) UNINSURED OR UNDERINSURED MOTORIST COVERAGE, ⚡2772–2816.
- (E) NO-FAULT COVERAGE; MEDICAL PAYMENTS, ⚡2817–2856.
- (F) GARAGE OR AUTOMOBILE SERVICE LIABILITY, ⚡2857–2886.
- (G) TRUCKERS' AND MOTOR CARRIERS' LIABILITY, ⚡2887–2908.

XXIII. DUTY TO DEFEND, ⚡2911–2942.**XXIV. AVOIDANCE, ⚡2950–3026.**

- (A) IN GENERAL, ⚡2950–2985.
- (B) PARTICULAR KINDS OF INSURANCE, ⚡2986–3016.
- (C) SPECIAL CIRCUMSTANCES AFFECTING RISK, ⚡3017–3026.

XXV. FORFEITURE, ⚡3034–3073.

- (A) IN GENERAL, ⚡3034–3045.
- (B) PARTICULAR KINDS OF INSURANCE, ⚡3046–3073.

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES, ⚡3080–3132.**XXVII. CLAIMS AND SETTLEMENT PRACTICES, ⚡3140–3408.**

- (A) IN GENERAL, ⚡3140.
- (B) CLAIM PROCEDURES, ⚡3141–3333.

1. IN GENERAL, ⚡3141.**XXVII. CLAIMS AND SETTLEMENT PRACTICES—Cont'd**

- (B) CLAIM PROCEDURES—Cont'd
- 2. NOTICE AND PROOF OF LOSS, ⚡3142–3201.

3. COOPERATION, ⚡3202–3221.**4. ADJUSTERS, ⚡3222–3243.****5. THIRD-PARTY ADMINISTRATORS, ⚡3244–3246.****6. APPRAISAL, ⚡3247–3264.****7. ARBITRATION, ⚡3265–3332.****8. MEDIATION, ⚡3333.**

- (C) SETTLEMENT DUTIES; BAD FAITH, ⚡3334–3382.

- (D) REQUISITES AND VALIDITY OF SETTLEMENT OR RELEASE, ⚡3383–3389.

- (E) CONSTRUCTION AND EFFECT OF SETTLEMENT OR RELEASE, ⚡3390–3392.

- (F) PAYMENT OF PROCEEDS, ⚡3393–3408.

XXVIII. MISCELLANEOUS DUTIES AND LIABILITIES, ⚡3415–3427.**XXIX. PERSONS ENTITLED TO PROCEEDS, ⚡3433–3498.**

- (A) IN GENERAL, ⚡3433–3441.

- (B) PROPERTY INSURANCE, ⚡3442–3454.

- (C) LIABILITY INSURANCE, ⚡3455–3459.

- (D) UNINSURED OR UNDERINSURED MOTORIST COVERAGE, ⚡3460.

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1000. In general.

1001. What is insurance.

1002. Who are insurers.

1004. Self-insurance and self-insurers.

1005. Gambling distinguished from insurance.

1006. Annuities distinguished from insurance.

1007. Types of insurance.

217. INSURANCE**I. IN GENERAL; NATURE OF INSURANCE.**(Cont'd)

- 1008. — In general.
- 1009. — Property.
- 1010. — Liability.
- 1011. — Life.
- 1012. — Health and accident.
- 1013. — Title.
- 1014. — Fidelity and guaranty.
- 1015. — Automobile.

II. REGULATION IN GENERAL.**(A) IN GENERAL.**

- 1020. In general.

(B) FEDERAL AGENCIES AND REGULATION.

- 1021. In general.

(C) STATE AGENCIES AND REGULATION.

- 1022. In general.
- 1023. Departments or commissions of insurance.
- 1024. — In general.
- 1025. — Powers and duties.
- 1026. — Liabilities.
- 1027. — Actions.
 - (1). In general.
 - (2). Capacity to sue or be sued.
- 1028. Commissioners or superintendents of insurance.
- 1029. — In general.
- 1030. — Appointment.
- 1031. — Tenure.
- 1032. — Bonds.
- 1033. — Compensation.
- 1034. — Powers and duties.
- 1035. — Liabilities.
- 1036. — Conflicts of interest.
- 1037. — Actions.
- 1038. Employees.
- 1039. — In general.
- 1040. — Appointment.
- 1041. — Tenure.
- 1042. — Compensation.
- 1043. — Powers and duties.
- 1044. — Liabilities.
- 1045. — Conflicts of interest.
- 1046. Records.
- 1047. Reports.

II. REGULATION IN GENERAL.(Cont'd)

- 1048. Examination of companies.
- 1049. Fees and charges.
- 1050. Funds.
- 1051. Investigations and proceedings in general.
- 1052. — In general.
- 1054. — Production of documents; subpoenas.
- 1055. Hearings and adjudications.
- 1056. Orders.
- 1057. Rules and rulemaking.
- 1058. — In general.
- 1059. — Proceedings for adoption.
- 1060. — Promulgation.
- 1061. — Filing or recording.
- 1062. — Construction.
- 1063. — Amendment.
- 1064. — Repeal.
- 1065. — Expiration.
- 1066. — Enforcement in general.
- 1067. — Excuses for non-compliance.
- 1068. — Collateral attack.
- 1069. — Pleading and proof.
- 1070. Judicial remedies and review.
- 1071. Related agencies or departments.
- 1072. — In general.
- 1073. — Fire safety and prevention.
- 1074. — Health care.
- 1075. Cooperation with other state or nationwide agencies.
- 1076. Treaties.

III. WHAT LAW GOVERNS.**(A) CHOICE OF LAW.**

- 1080. In general.
- 1081. Selection of choice of law rules.
- 1082. — In general.
- 1083. — Procedural issues.
- 1084. — Federal forums.
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- 1085. — State forums.
- 1086. Choice of law rules.
- 1087. — In general.
- 1088. — Place of contracting or performance.
- 1089. — Significant relationship test.
- 1090. — Public policy.
- 1091. — Particular applications of rules.

217. INSURANCE**III. WHAT LAW GOVERNS.(Cont'd)**

- (1). In general.
- (2). Property insurance.
- (3). Liability insurance.
- (4). — In general.
- (5). — Environmental coverages or exclusions.
- (6). — Products liability coverages or exclusions.
- (7). Life insurance.
- (8). Health and accident insurance.
- (9). Automobile insurance.
- (10). — In general.
- (11). — Uninsured or underinsured motorist coverage.
- (12). — No-fault coverage.
- (13). Insolvency or liquidation; claims.
- (14). Reinsurance.
- (15). Bad faith and unfair practices; punitive damages.

1092. Contractual or policy clauses; agreements.

(B) PREEMPTION; APPLICATION OF STATE OR FEDERAL LAW.

See also, STATES ⇨18.41.

- 1100. In general.
- 1101. The “business of insurance” in general.
- 1102. Particular laws or activities.
- 1103. — In general.
- 1104. — Sales, marketing and advertising.
- 1105. — Annuities.
- 1106. — Anti-trust.
 - (1). In general.
 - (2). Boycotts.
- 1107. — Alternative dispute resolution.
- 1108. — Banking.
- 1109. — Health care.
- 1110. — Federal insurance programs.
- 1111. — Insolvency or bankruptcy.
- 1112. — Licensing or registration.
- 1113. — Maritime matters.

See also, ADMIRALTY ⇨1.20(2).
- 1114. — Risk retention groups.
- 1115. — Securities laws.
- 1116. — Taxation.
- 1117. — Employee benefits.
 - (1). In general.
 - (2). Retirement pensions.

III. WHAT LAW GOVERNS.(Cont'd)

- (3). Health care benefits.
- (4). Disability benefits.

IV. INSURANCE COMPANIES AND RELATED ENTITIES.**(A) DOMESTIC COMPANIES IN GENERAL.**

- 1120. In general.
- 1121. Definitions.
- 1122. Incorporation and organization.
- 1123. — In general.
- 1124. — Organizing documents.
- 1125. Authority to do business.
- 1126. — In general.
- 1127. — Certificates, licenses or registration.
- 1128. — Territorial limitations.
- 1129. — Authorized business.
- 1130. Powers and duties.
- 1131. Directors, officers or other representatives.
- 1132. — In general.
- 1133. — Powers, duties, and liabilities.
- 1134. — Conflicts of interest.
- 1135. Financial requirements.
- 1136. — In general.
- 1137. — Deposits of securities or other assets.
- 1138. — Capital and surplus.
- 1139. — Reserves.
- 1140. — Assets and liabilities.
- 1141. — Risk limits.
- 1142. Investments.
- 1143. Members or subscribers.
- 1144. — In general.
- 1145. — Eligibility.
- 1146. — Subscription agreements; certificates.
- 1147. — Liabilities.
- 1148. — Assessments.
- 1149. — Voting rights.
- 1150. Stock and stockholders.
- 1151. — In general.
- 1152. — Voting rights.
- 1153. Dividends or other distributions.
- 1154. Records.
- 1155. Reporting requirements.
- 1156. — In general.
- 1157. — Annual statements.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1158. — Disclosure of material transactions or financial interests.
- 1159. Mergers or consolidations.
- 1160. Conversions or reorganizations.
- 1161. Changes of domicile.
- 1162. Dissolution.

(B) FOREIGN COMPANIES.

- 1163. In general.
- 1164. What constitutes “doing business”.
- 1165. Authority to do business.
- 1166. Financial requirements.
- 1167. Investments.
- 1168. Records.
- 1169. Reporting requirements.
- 1170. Domestication.
- 1171. Retaliatory provisions.
- 1172. Effect of noncompliance with regulations.

(C) ALIEN COMPANIES.

- 1173. In general.
- 1174. What constitutes “doing business”.
- 1175. Authority to do business.
- 1176. Financial requirements.
- 1177. Investments.
- 1178. Records.
- 1179. Reporting requirements.
- 1180. Domestication.
- 1181. Retaliatory provisions.
- 1182. Effect of noncompliance with regulations.

(D) SPECIAL TYPES OF ENTITIES.

- 1183. Affiliates and subsidiaries.
- 1184. Holding companies.
- 1185. — In general.
- 1186. — Certificates, licenses or registration.
- 1187. — Authorized business; transaction standards.
- 1188. — Financial requirements.
- 1189. — Mergers, acquisitions or consolidations.
- 1190. Captive insurers.
- 1191. — In general.
- 1192. — Definitions.
- 1193. — Incorporation.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- (1). In general.
- (2). Organizing documents.
- 1194. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1195. — Directors, officers or other representatives.
- 1196. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
- 1197. — Investments.
- 1198. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1199. — Conversions or reorganizations.
- 1200. — Changes in domicile.
- 1201. Producer controlled insurers.
- 1202. Reciprocal or cooperative insurers.
- 1203. — In general.
- 1204. — Definitions.
- 1205. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1206. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1207. — Powers and duties.
- 1208. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1209. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
 - (5). Assets and liabilities.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- (6). Risk limits.
- 1210. — Investments.
- 1211. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.
- 1212. — Stock and stockholders.
 - (1). In general.
 - (2). Voting rights.
- 1213. — Dividends or other distributions.
- 1214. — Records.
- 1215. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1216. — Mergers or consolidations.
- 1217. — Conversions or reorganizations.
- 1218. Underwriting associations and related entities.
- 1219. — In general.
- 1220. — Definitions.
- 1221. — Organization.
 - (1). In general.
 - (2). Organizing documents; plans.
- 1222. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1223. — Powers, duties, and liabilities.
- 1224. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1225. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
 - (5). Assets and liabilities.
 - (6). Risk limits.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1226. — Investments.
- 1227. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.
- 1228. — Dividends or other distributions.
- 1229. — Records.
- 1230. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1231. — Mergers or consolidations.
- 1232. — Conversions or reorganizations.
- 1233. — Changes of domicile.
- 1234. — Dissolution.
- 1235. Fraternal benefit organizations.
- 1236. — In general.
- 1237. — Definitions.
- 1238. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1239. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1240. — Powers and duties.
- 1241. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1242. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
 - (5). Assets and liabilities.
 - (6). Risk limits.
- 1243. — Investments.
- 1244. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- (3). Subscription agreements; certificates.
- (4). Liabilities.
- (5). Assessments.
- (6). Voting rights.
- 1245. — Dividends or other distributions.
- 1246. — Records.
- 1247. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1248. — Mergers or consolidations.
- 1249. — Conversions or reorganizations.
- 1250. Health related entities.
- 1251. — In general.
- 1252. — Definitions.
- 1253. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1254. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1255. — Powers and duties.
- 1256. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1257. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
 - (5). Assets and liabilities.
 - (6). Risk limits.
- 1258. — Investments.
- 1259. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1260. — Dividends or other distributions.
- 1261. — Records.
- 1262. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1263. — Mergers or consolidations.
- 1264. — Conversions or reorganizations.
- 1265. — Dissolution.
- 1266. Motor clubs and non-health service corporations.
- 1267. — In general.
- 1268. — Definitions.
- 1269. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1270. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1271. — Powers and duties.
- 1272. — Directors, officers or other representatives.
- 1273. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Reserves.
 - (4). Assets and liabilities.
- 1274. — Investments.
- 1275. — Members or subscribers.
 - (1). In general.
 - (2). Subscription agreements; certificates.
- 1276. — Records.
- 1277. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1278. — Mergers or consolidations.
- 1279. — Conversions or reorganizations.
- 1280. — Dissolution.
- 1281. Warranty associations.
- 1282. — In general.
- 1284. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1291. Risk-retention and purchasing groups.
- 1292. — In general.
- 1293. — Definitions.
- 1294. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1295. Premium finance companies.
- 1296. — In general.
- 1297. — Definitions.
- 1298. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1299. — Records.
- 1300. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1301. Government sponsored programs.
- 1302. — In general.
- 1303. — Definitions.
- 1304. — Plan of operation or management.
- 1305. — Powers, duties and proceedings.
- 1306. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
- 1307. — Financial requirements.
- 1308. — Members or subscribers.
 - (1). In general.
 - (4). Assessments.
- 1309. — Records.
- 1311. Miscellaneous entities.
- 1312. — In general.
- 1315. — Authority to do business.
- 1317. — Directors, officers or other representatives.
- 1318. — Financial requirements.
- 1322. — Dividends or other distributions.
- 1325. — Mergers or consolidations.

V. SURPLUS LINES.

- 1330. In general.
- 1345. Brokers and agents.

V. SURPLUS LINES.(Cont'd)

- 1346. — In general.
- 1347. — Licenses.
- 1348. — Powers and duties.
- 1349. — Records and reports.

VI. FINANCIAL IMPAIRMENT.**(A) IN GENERAL.**

- 1350. In general.
- 1351. Remedies.
- 1352. — In general.
- 1353. — Exclusiveness of remedies.
- 1354. — Injunctions.
- 1355. — Declaratory judgments.
- 1356. — Correction by insurer.
- 1357. Grounds for supervision, conservation, rehabilitation or liquidation.
- 1358. Agents.
- 1359. — In general.
- 1360. — Notice to.
- 1361. — Duties and liabilities.
- 1362. Assets.
- 1363. — In general.
- 1364. — Attachment and garnishment.
- 1365. — Listing and collection.
- 1366. — Unpaid premiums.
- 1367. — Preferences, liens and fraudulent transactions.
- 1368. — Distribution or sale.
- 1369. Liabilities.
- 1370. — In general.
- 1371. — Unearned premiums.
- 1372. Assessments.
- 1373. Set-offs and counterclaims.
- 1374. Records and reports.
- 1375. Federal receiverships.
- 1376. Reinsurance.
- 1377. Effect on policies.

(B) PROCEEDINGS.

- 1378. In general.
- 1379. Notice.
- 1380. Petitions.
- 1381. Commencement; time and notice requirements.
- 1382. Summary proceedings.
- 1383. Seizure orders.
- 1384. Jurisdiction and venue.
- 1385. Stays of proceedings.

217. INSURANCE**VI. FINANCIAL IMPAIRMENT.(Cont'd)**

- 1386. Effect on other proceedings.
- 1387. Evidence.
- 1388. Questions of law or fact.
- 1389. Hearings.
- 1390. Termination.
- 1391. Re-opening or rehearing.
- 1392. Orders.
- 1393. — In general.
- 1394. — Rehabilitation.
- 1395. — Conservation.
- 1396. — Liquidation.
- 1397. — Receivership.
- 1398. — Restrictions on authority to do business.
- 1399. Costs and expenses.
- 1400. Bonds.
- 1401. Review.

(C) SUPERVISORS, LIQUIDATORS, CONSERVATORS, REHABILITATORS OR RECEIVERS.

- 1402. In general.
- 1403. Appointment.
- 1404. Tenure; discharge.
- 1405. Powers and duties.
- 1405.5. Liabilities and immunities.
- 1406. Actions.
- 1407. — In general.
- 1408. — Evidence.
- 1409. — Questions of law or fact.
- 1410. Recommendations.
- 1411. Review.

(D) CLAIMS.

- 1412. In general.
- 1413. Filing.
- 1414. Priorities.
- 1415. Special or third-party claims.
- 1416. Disputed claims.
- 1417. Sureties' claims.
- 1418. Secured creditors' claims.
- 1419. Claims by non-residents against domestic companies.
- 1420. Claims by residents against foreign companies.
- 1421. Unclaimed or withheld funds.

VII. GUARANTY FUNDS OR ASSOCIATIONS.**(A) IN GENERAL.**

- 1470. In general.

(B) ADMINISTRATION.

- 1471. In general.
- 1472. Creation.
- 1473. Powers and duties.
- 1474. Inspection of books and records.
- 1475. Fees and expenses.
- 1476. Plan of operation.
- 1477. Prevention of insolvencies.
- 1478. Liabilities of associations or funds.
- 1479. Notice to policy holders.
- 1480. Supervision or regulation.
- 1481. Reports.

(C) MEMBERSHIP.

- 1482. In general.
- 1483. Mandatory membership or contributions.
- 1484. Exemptions.
- 1485. Assessments.

(D) CLAIMS AND PROCEEDINGS.

- 1486. In general.
- 1487. Policies covered.
- 1488. Claimants covered.
- 1489. — In general.
- 1490. — Residents.
- 1491. — Non-residents.
- 1492. — Insurers, reinsurers and similar entities.
- 1493. Claims covered.
- 1494. — In general.
- 1495. — Costs and expenses.
- 1496. — Penalties and punitive damages.
- 1497. — Subrogation claims.
- 1498. — Settlements.
- 1499. Limitations on amount of coverage.
- 1500. Non-duplication; deductions and offsets.
- 1501. Exhaustion of other sources of recovery.
- 1502. Procedure.
- 1503. — In general.
- 1504. — Filing.
 - (1). In general.
 - (2). Time requirements.

217. INSURANCE**VII. GUARANTY FUNDS OR ASSOCIATIONS.(Cont'd)**

- 1505. — Investigation.
- 1506. — Evidence; proof of claim.
- 1507. — Determination.
- 1508. — Judicial remedies and review.
- 1509. Effect of payment.
- 1510. — In general.
- 1511. — Reimbursement and subrogation.
- 1512. — Claimants' rights against insured.

VIII. UNDERWRITING.

- 1515. In general.
- 1516. Actuaries.
- 1517. Fair access requirements; discrimination.
- 1518. — In general.
- 1519. — Race.
- 1520. — Age.
- 1521. — Sex.
- 1522. — Sexual orientation; homosexuality.
- 1523. — Acquired immune deficiency syndrome (AIDS) and related conditions.
- 1524. — Genetic testing.
- 1525. Adverse underwriting decisions.
- 1526. — In general.
- 1527. — Review.
- 1528. Assigned risks.
- 1529. — In general.
- 1532. — Property and liability insurance; automobiles.
Assigned claims plans, see Automobiles V(C).
- 1535. — Medical malpractice insurance.
- 1537. Joint underwriting associations and related entities.
- 1538. — In general.
- 1539. — Risk apportionment plans.
- 1540. Rates and rate setting.
- 1541. — In general.
- 1542. — Factors and standards.
 - (1). In general.
 - (2). Loss experience; allowable expenses.
 - (3). Substandard risks.
- 1543. — Modification of rates.
 - (1). In general.
 - (2). Refunds; credits.
 - (3). Modification during policy period.

VIII. UNDERWRITING.(Cont'd)

- 1544. — Filings.
 - (1). In general.
 - (2). Duty to file.
 - (3). Sufficiency of filings; forms.
- 1545. — Actions and proceedings.
 - (1). In general.
 - (2). Primary jurisdiction; exhaustion of remedies.
 - (3). Parties.
 - (4). Hearings and findings.
 - (5). Questions of law and fact.
 - (6). Determination; orders.
 - (7). Review.
- 1546. — Evidence.
- 1547. — Rating organizations.
 - (1). In general.
 - (2). Notices.
 - (3). Deviation.
- 1548. — Records.
 - (1). In general.
 - (2). Duty to maintain.
 - (3). Inspection.

IX. SALES, MARKETING AND ADVERTISING PRACTICES.

- 1560. In general.
- 1561. Disclosures in general.
- 1562. Misrepresentation; false advertising.
- 1563. — In general.
- 1564. — Premiums, rates or charges.
- 1565. — Coverage.
- 1566. — Financial condition.
- 1567. Rebates or other improper inducements.
- 1568. Boycotts, intimidation or coercion.
- 1569. Defamation of other insurers.
- 1570. Fictitious grouping.
- 1571. Unauthorized insurers.
- 1572. Vending machine sales.
- 1573. Mass marketing plans.
- 1574. Actions and proceedings.
- 1575. — In general.
- 1576. — Evidence.
- 1577. — Questions of law or fact.
- 1578. Civil penalties.

217. INSURANCE**X. PRIVACY OF INFORMATION.**

Evidentiary and discovery privileges, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY. Records and information in hands of Insurance Commissioner and other government entities, see RECORDS.

- 1580. In general.
- 1581. Policy and application.
- 1582. — In general.
- 1583. — Pretext interviews.
- 1584. — Notice of information practices.
- 1585. — Marketing or research questions.
- 1586. Access to information concerning insured.
- 1587. — In general.
- 1588. — Correction, amendment or deletion of information.
- 1589. False pretenses to obtain information.
- 1590. Disclosure by insurer.
- 1591. — In general.
- 1592. — Authorization of disclosure; forms.
- 1593. — Unauthorized disclosure.
- 1594. — Confidentiality of insurer's records and reports.
- 1595. — Disclosure to government agencies.
 - (1). In general.
 - (2). Insurance department.
- 1597. Immunities.
- 1599. Proceedings.
- 1600. — In general.
- 1601. — Commissioner as agent for organizations engaged in foreign transactions.
- 1602. — Review.

XI. AGENTS AND AGENCY.**(A) IN GENERAL.**

- 1604. In general.
- 1605. Agency for insurer or insured.
- 1606. — In general.
- 1607. — Effect of statutes.
- 1608. — Dual agency.
- 1609. — Brokers.
- 1610. — Procurers of group insurance.

(B) LICENSES AND PERMITS; REGULATION IN GENERAL.

- 1611. In general.
- 1612. Eligibility for license.

XI. AGENTS AND AGENCY.(Cont'd)

- 1613. — In general.
 - 1614. — Education requirements.
 - 1615. Issuance or refusal.
 - 1616. Renewal.
 - 1617. Discipline.
 - 1618. — In general.
 - 1619. — Investigations.
 - 1620. — Proceedings.
 - 1621. Resignation, surrender or abandonment of license.
 - 1622. Judicial review.
 - 1623. Fees.
 - 1624. Agents for foreign or alien insurers; nonresidents.
- (C) AGENTS FOR INSURERS.**
- 1625. In general.
 - 1626. Appointment or employment.
 - 1627. Duration and termination of agency.
 - 1628. Implied agency.
 - 1629. Estoppel to deny agency.
 - 1630. Expiration records or data.
 - 1631. Evidence as to authority.
 - 1632. Scope and extent of agency.
 - 1633. — In general.
 - 1634. — Contracts.
 - (1). In general.
 - (2). General or special agents.
 - (3). Soliciting agents.
 - (4). Assistants and clerks.
 - (5). Instructions or undisclosed limitations.
 - 1635. — Evidence.
 - 1636. — Questions of law or fact.
 - 1637. Unauthorized or wrongful acts of agent.
 - 1638. — In general.
 - 1639. — Negligence.
 - 1640. — Fraud or misrepresentation.
 - 1641. — Ratification.
 - 1642. Notice to agent.
 - 1643. Duties and liabilities of agent to insurer.
 - 1644. — In general.
 - 1645. — Accounting; handling of premiums.
 - (1). In general.
 - (2). Actions.

217. INSURANCE**XI. AGENTS AND AGENCY.(Cont'd)**

- 1646. — Cancellation or reduction of policies.
- 1647. — Negligence.
- 1648. — Fraud.
- 1649. — Conversion.
- 1650. Duties and liabilities of insurer to agent.
- 1651. — In general.
- 1652. — Compensation.
 - (1). In general.
 - (2). Right to commissions.
 - (3). Renewal commissions; termination of employment.
 - (4). Canceled policies.
 - (5). Effect of noncompliance with regulations.
 - (6). Reimbursement of advances, expenses, and losses.
 - (7). Subagents.
 - (8). Actions for compensation.
- 1653. — Contractual duties, and breach thereof.
 - (1). In general.
 - (2). Actions.
- 1654. Duties and liabilities to insureds or other third persons.

(D) AGENTS FOR APPLICANTS OR INSURED.

- 1655. In general.
- 1656. Appointment or employment.
- 1657. Duration and termination of agency.
- 1658. Scope and extent of agency.
- 1659. — In general.
- 1660. — Representation of multiple parties.
- 1661. — Evidence.
- 1662. — Questions of fact.
- 1663. Notice to agents.
- 1664. Unauthorized or wrongful acts.
- 1665. — In general.
- 1666. — Ratification.
- 1667. — Actions.
- 1668. Duties and liabilities to insureds or others.
- 1669. — In general.
- 1670. — Negligence in general.
- 1671. — Failure to procure coverage.

XI. AGENTS AND AGENCY.(Cont'd)

- 1672. — Fraud or misrepresentation; concealment.
- 1673. — Actions.
- 1674. Duties and liabilities of insureds to agents.
- (E) THIRD PARTY ADMINISTRATORS.**
- 1675. In general.
- 1676. Agreements with principals.
- 1677. License or registration.
- 1681. Compensation.
- 1682. Notice requirements.
- 1684. Underwriting authority.
- 1692. Liabilities.

XII. PROCUREMENT OF INSURANCE BY PERSONS OTHER THAN AGENTS.

- 1701. In general.
- 1702. Contracts and other instruments.
- 1703. Negligence.
- 1704. Actions.

XIII. CONTRACTS AND POLICIES.**(A) IN GENERAL.**

- 1710. In general.
- 1711. Nature of contracts or policies.
- 1712. — In general.
- 1713. — Policies considered as contracts.
- 1714. — Contracts or policies as law between parties.
- 1715. — Adhesion contracts.
- 1716. — Particular types of insurance.
- 1717. Property in, and possession of, policies.
- 1718. — In general.
- 1719. — Ownership.
- 1720. Validity and enforceability.
- 1721. — In general.
- 1722. — Violation of statute.
- 1723. — Discrimination between insureds.
- 1724. — Fraud or mistake.
- 1725. — Public policy.
- 1726. — Partial invalidity.
- 1727. Evidence.
- 1728. Questions of law or fact.

(B) FORMATION.

- 1729. In general.
- 1730. Assent of parties.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1731. Offer and acceptance; applications.
- 1732. — In general.
- 1733. — Form and contents of applications.
- 1734. — Necessity of acceptance and approval.
- 1735. — What constitutes acceptance.
- 1736. — Effect of delay.
- 1737. — Notice of rejection.
- 1738. — Effect of acceptance and approval.
- 1739. — Offers to insure and acceptances thereof.
- 1740. — Counter-offers and acceptances thereof.
- 1741. Executory agreements.
- 1742. Oral contracts; negotiations.
- 1743. — In general.
- 1744. — Authority of agent.
- 1745. — Merger in policies.
- 1746. Preliminary or temporary insurance.
- 1747. — In general.
- 1748. — Binders.
- 1749. Execution.
- 1750. Attaching documents to policies.
- 1751. — In general.
- 1752. — Applications or copies thereof.
- 1753. Delivery.
- 1754. — In general.
- 1755. — Necessity.
- 1756. — Sufficiency and effect.
- 1757. — Conditional delivery or acceptance in general.
- 1758. — Good health of insured.
- 1759. — Acceptance and effect thereof.
- 1760. Payment of first premium.
- 1761. — In general.
- 1762. — Necessity.
- 1763. — Good health or lifetime of insured.
- 1764. — Mode of payment.
 - (1). In general.
 - (2). By note or check.
- 1765. Group insurance.
- 1766. Evidence.
- 1767. Questions of law or fact.

(C) FORMAL REQUISITES.

- 1768. In general.
- 1769. Conspicuity and legibility.
- 1770. — In general.
- 1771. — Size and style of type.
- 1772. — Exclusions, exceptions or limitations.
- 1773. Plain language requirements.
- 1774. Filing and approval.
- 1775. Standardized policies.
- 1776. Group insurance.
- 1777. Evidence.
- 1778. Questions of law or fact.

(D) INSURABLE INTEREST.

- 1779. In general.
- 1780. Necessity in general.
- 1781. Lack of insurable interest.
- 1782. — In general.
- 1783. — Public policy.
- 1784. — Creation of wagering contracts.
- 1785. Right to question existence of interest.
- 1786. Assignments of policies to persons without interest.
- 1787. Termination of interest.
- 1788. Particular types of coverage.
- 1789. — In general.
- 1790. — Property and title insurance.
 - (1). In general.
 - (2). Necessity.
 - (3). Agents, consignees, factors or bailees.
 - (4). Buyers or sellers of personal property.
 - (5). Vendors or purchasers of real property.
 - (6). Creditors or lienholders in general.
 - (7). Mortgagors or mortgagees.
 - (8). Landlords or tenants.
 - (9). Lessors or lessees of personal property.
 - (10). Spouses.
- 1791. — Life insurance.
 - (1). In general.
 - (2). Parents and children.
 - (3). Spouses and former spouses.
 - (4). Creditors.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

(5). Corporations, partnerships, associations or employers.

1791.5. — Accident insurance.

1792. — Disability insurance.

1793. — Medical insurance.

1794. — Liability insurance.

1794.5. — Automobile insurance.

1795. — Group insurance.

(E) ESTOPPEL AND WAIVER.

1796. In general.

1797. Insurable interest.

1798. Payment of first premium.

1799. Estoppel of or waiver by insureds.

1800. — In general.

1801. — Duty to read policies.

(F) RATIFICATION.

1802. In general.

1803. By insurers.

1804. By insureds.

(G) RULES OF CONSTRUCTION.

1805. In general.

1806. Application of rules of contract construction.

1807. Function of, and limitations on, courts, in general.

1808. Ambiguity in general.

1809. Construction or enforcement as written.

1810. Construction as a whole.

1811. Intention.

1812. — In general.

1813. — Language of policies.

1814. — Entire contract.

1815. Reasonableness.

1816. — In general.

1817. — Reasonable expectations.

1818. — Reasonable persons.

1819. Understanding of ordinary or average persons.

1820. — In general.

1821. — Laypersons or experts.

1822. Plain, ordinary or popular sense of language.

1823. Exceptions, exclusions or limitations.

1824. Definitions in policies.

XIII. CONTRACTS AND POLICIES.(Cont'd)

1825. Particular words or terms.

1826. Repugnant or conflicting clauses.

1827. Construction to be unstrained.

1828. Construction to be fair.

1829. Liberal or strict construction.

1830. Favoring insureds or beneficiaries; disfavoring insurers.

1831. — In general.

1832. — Ambiguity, uncertainty or conflict.

(1). In general.

(2). Necessity of ambiguity.

(3). Mandated language.

1833. — Status or bargaining power of insureds.

1834. — Particular types of coverage.

(1). In general.

(2). Life, health or accident.

(3). Liability or indemnity.

1835. — Particular portions or provisions of policies.

(1). In general.

(2). Exclusions, exceptions or limitations.

1836. Favoring coverage or indemnity; disfavoring forfeiture.

1837. Matters extrinsic to policies in general.

1838. Materials related or attached to policies.

1839. — In general.

1840. — Applications.

1841. — Binders.

1842. — Executory agreements.

1843. — Premium receipts.

1844. — Printed or written provisions.

1845. — Margins or backs of policies; endorsements.

(1). In general.

(2). Conflicts between policies and endorsements.

1846. — Attachments in general.

1847. — Group insurance certificates.

1848. Charters, bylaws or rules of insurers.

1849. Existing law.

1850. — In general.

1851. — As part of policies.

1852. — Automobile insurance.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1853. Construction by parties; course of conduct or prior dealings.
- 1854. Usage of trade or business.
- 1855. Dictionaries.
- 1856. Entire or severable nature of policies or contracts.
- 1857. Evidence.
- 1858. — In general.
- 1859. — Admissibility.
- 1860. — Presumptions.
- 1861. — Burden of proof.
- 1862. — Weight and sufficiency.
- 1863. Questions of law or fact.

(H) RELATIONS BETWEEN PARTIES; IMPLIED TERMS.

- 1864. In general.
- 1865. Third-party beneficiaries.
- 1866. Fiduciary relationships in general.
- 1867. Good faith and fair dealing.

(I) LOANS ON POLICIES.

- 1868. In general.

(J) MODIFICATION OF POLICIES.

- 1869. In general.
- 1870. Powers of agents or brokers.
- 1871. Notice.
- 1872. Assent of parties.
- 1873. Oral modifications.
- 1874. Endorsements or attachments.
- 1875. Consideration.
- 1876. Effect.
- 1877. — In general.
- 1878. — Creation of new policy.
- 1879. Group insurance.
- 1880. Evidence.
- 1881. Questions of law or fact.

(K) REFORMATION.

- 1882. In general.
- 1883. Right to reformation in general.
- 1884. Grounds.
- 1885. — In general.
- 1886. — Fraud or misrepresentation.
 - (1). In general.
 - (2). Property or interest covered.
 - (3). Title or ownership.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- (4). Terms or durations of policies.
- (5). Premiums.
- 1887. — Mistake.
 - (1). In general.
 - (2). Property or interest covered.
 - (3). Terms or durations of policies.
 - (4). Amounts of coverage.
 - (5). Premiums.
- 1888. Necessity for reformation.
- 1889. — In general.
- 1890. — Requirements of equity.
- 1891. Actions.
- 1892. — In general.
- 1893. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.

(L) RENEWAL.

- 1894. In general.
- 1895. Powers of agents or brokers.
- 1896. Payment of premiums.
- 1897. Right or obligation to renew.
- 1898. — In general.
- 1899. — Grounds or cause for nonrenewal.
- 1900. Notice in general.
- 1901. Assent of parties in general.
- 1902. Offers and acceptances.
- 1903. Terms, conditions and subject matter; notice of changes.
- 1904. New policies as separate policies.
- 1905. Group insurance.
- 1906. Evidence.
- 1907. Questions of law or fact.

(M) CONVERSION.

- 1908. In general.
- 1909. Group insurance.
- 1910. — In general.
- 1911. — Notice.

(N) CANCELLATION OR REVOCATION BY INSURER.

- 1912. In general.
- 1913. Right to cancel.
- 1914. — In general.
- 1915. — Estoppel or waiver in general.
- 1916. — Noncancellation clauses.
- 1917. — Creditors or third persons.
- 1918. Time for cancellation.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1919. — In general.
- 1920. — Subsequent to claims or loss.
- 1921. Grounds for cancellation.
- 1922. — In general.
- 1923. — Fraud or misrepresentation.
- 1924. — Claim or loss experience.
- 1925. — Driving record.
- 1926. — License and registration.
- 1927. Procedure for cancellation.
- 1928. — In general.
- 1929. — Notice.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Time.
 - (4). Conspicuity and legibility; type size or style.
 - (5). Plain language requirements.
 - (6). Service or mailing.
 - (7). — In general.
 - (8). — Inadequate or incorrect address.
 - (9). — New or changed address.
 - (10). Notice to third persons.
 - (11). — In general.
 - (12). — Agents or brokers.
 - (13). — Public officers.
- 1930. Repayment of unearned premiums.
- 1931. Waiver or ratification of defective cancellation.
- 1932. Operation and effect.
- 1933. Effective date.
- 1934. Group insurance.
- 1935. Evidence.
- 1936. Questions of law or fact.
- 1937. Remedies for wrongful cancellation.
- 1938. — In general.
- 1939. — Persons entitled.
- 1940. — Anticipatory breach.

(O) SURRENDER OR TERMINATION BY, OR ON BEHALF OF, INSURED.

- 1941. In general.
- 1942. Authority or consent.
- 1943. — In general.
- 1944. — Agents or brokers.
- 1945. — Third persons.
- 1946. Time.
- 1947. Estoppel and waiver.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1948. Right to surrender.
- 1949. — In general.
- 1950. — Life insurance.
- 1951. — Accident insurance.
- 1952. Acts constituting surrender or termination.
- 1953. Validity or enforceability.
- 1954. Notice.
- 1955. Operation and effect.
- 1956. Effective date.
- 1957. Paid-up value.
- 1958. Group insurance.
- 1959. Abandonment.
- 1960. Evidence.
- 1961. Questions of law or fact.

(P) TERMINATION BY AGREEMENT.

- 1962. In general.

(Q) REINSTATEMENT OR REVOCATION OF CANCELLATION.

- 1964. In general.
- 1965. After termination or cancellation by insurers in general.
- 1966. After surrender or termination by insureds.

(R) RESCISSION FOR FRAUD OR MISTAKE.

- 1967. In general.
- 1968. Rescission by insurers.
- 1969. Rescission by insureds or beneficiaries.
- 1970. Actions.

(S) TRANSFERS OF POLICIES.

- 1971. In general.
- 1972. Regulation in general.
- 1973. Policy provisions, in general.
- 1974. Beneficiaries rights to assign.
- 1975. Consent.
 - 1976. — In general.
 - 1977. — By beneficiaries.
 - 1978. — By insureds.
 - 1979. — By mortgagees.
 - 1980. — By insurers.
 - (1). In general; necessity.
 - (2). Sufficiency and effect.
 - (3). Waiver or estoppel.
- 1981. Form and requisites; validity.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1982. — In general.
- 1983. — Oral assignments.
- 1984. — Consideration.
- 1985. — Delivery and acceptance.
- 1986. — Transfer of insured property.
- 1987. — Notice.
- 1988. Rights and liabilities of assignees.
- 1989. — In general.
- 1990. — Transfers to purchasers of insured property.
- 1991. Transfer as collateral security.
- 1992. Priorities.
- 1993. Reassignments.
- 1994. Viatical settlements.
- 1995. Evidence.
- 1996. Questions of law or fact.

XIV. PREMIUMS.**(A) IN GENERAL.**

- 2000. In general.

(B) OBLIGATION TO PAY.

- 2001. In general.
- 2002. Attachment of risk.

(C) PERSONS LIABLE.

- 2003. In general.
- 2004. Named insureds.

(D) AMOUNTS PAYABLE.

- 2005. In general.
- 2006. Adjustment.
- 2007. — In general.
- 2008. — Additional premiums or surcharges.
- 2009. — Retrospective premiums.
- 2010. — Reduction.
 - (1). In general.
 - (2). Due to age.
 - (3). Due to profits or dividends.
- 2011. Conversion of group policies.
- 2012. Life insurance.
- 2013. Automobile insurance.

(E) PAYMENT.

- 2014. In general.
- 2015. Time for payment.
- 2016. — In general.

XIV. PREMIUMS.(Cont'd)

- 2017. — Notice.
- 2018. — Grace periods.
- 2019. — Computation.
- 2020. — Extensions of time periods.
- 2021. Persons paying.
- 2022. Persons to whom payments are made.
- 2023. — In general.
- 2024. — Agents or brokers.
- 2025. Method of payment; tender.
- 2026. — In general.
- 2027. — Payment by check, note, draft or order.
- 2028. — Application of dividends or credits.
- 2029. — Application of policy proceeds.
- 2030. — Remittance by mail.
- 2031. Group insurance.
- (F) DEFAULT OR FAILURE TO PAY.**
- 2032. In general.
- 2033. Rights of insureds upon default.
- 2034. Excuses for nonpayment in general.
- 2035. Estoppel and waiver.
- 2036. Ratification.
- 2037. Nonforfeiture benefits; continuing insurance or cash value.
- 2038. Lapse or termination of coverage.
- 2039. — In general.
- 2040. — Premium financing arrangements.
- 2041. Cancellation of coverage.
- 2042. — In general.
- 2043. — Mode of effecting cancellation in general.
- 2044. — Notice.
 - (1). In general.
 - (2). Notice to third persons.
- 2044.5. — Cancellation by or through premium financing organizations.
- 2045. — Operation and effect.
 - (1). In general.
 - (2). Effective date.
- 2046. — Repayment of unearned premiums.
 - (1). In general.
 - (2). Premium financing arrangements.
- 2047. — Actions.
 - (1). In general.
 - (2). Evidence.

217. INSURANCE**XIV. PREMIUMS.(Cont'd)**

- (3). Questions of law or fact.
2048. — Waiver or ratification of defective cancellation.
2049. Reinstatement or revocation of cancellation.
2050. — In general.
2051. — Conditions in general.
2052. — Continued insurability; inducing reinstatement.
2053. — Application and procedure.
2054. — Payment and acceptance of premium; agreement.
2055. — Effect.
2056. — Time; coverage during lapse.
2057. Actions for premiums.
2058. — In general.
2059. — Pleading.
2060. — Evidence.
2061. — Questions of law or fact.

(G) REFUND OR RECOVERY OF PREMIUMS PAID.

2062. In general.
2063. Premiums paid during period of disability.
2064. Failure to issue or deliver policies.
2065. Mistake or fraud of insurer or agent.
2066. Invalid or void policies.
2067. Actions.
2068. — In general.
2069. — Evidence.
2070. — Questions of law or fact.

(H) PREMIUM FINANCING ARRANGEMENTS.

2072. In general.
2073. Agreements with premium finance agencies or companies.
2074. — In general.
2075. — Requisites and validity.
- (1). In general.
- (2). Disclosure of information.
- (3). Additional premiums; renewals.
2076. — Construction; operation and effect.
2077. — Charges.
2078. — Payment of premiums to insurer or broker.

(I) ASSESSMENTS OR DUES.

2079. In general.
2080. Grounds for, or liability to, assessments.
2081. Amount of assessments.
2082. Levy, notice and payment.
2083. Refund or recovery of assessments paid.
2084. Actions.
2085. — In general.
2086. — Evidence.
2087. — Questions of law or fact.

XV. COVERAGE—IN GENERAL.

2090. In general.
2091. What is coverage.
2092. Duty to indemnify in general.
2093. Mandatory coverage.
2094. Commencement of coverage.
2095. Duration of coverage.
2096. Risks covered and exclusions.
2097. — In general.
2098. — Exclusions and limitations in general.
2099. — Property covered.
2100. — Persons covered.
2101. — Accident, occurrence, or event.
2102. — Willful, intentional or wrongful conduct.
2103. — Proximate cause.
- (1). In general.
- (2). Combined or concurrent causes.
2104. Extent of loss or liability in general.
2105. Amount of coverage; policy limits.
2106. Deductible amounts and co-payments.
2107. Other insurance.
2108. — In general.
2109. — What is other insurance.
2110. — Primary and excess insurance, in general.
- 2111.5. — Escape clauses.
2112. — Proration or allocation.
2113. Credits, deductions and offsets.
2114. Evidence.
2115. — In general.
2116. — Presumptions.
2117. — Burden of proof.
2118. — Admissibility.

217. INSURANCE**XV. COVERAGE—IN GENERAL.**(Cont'd)

2119. — Weight and sufficiency.
 2120. Questions of law or fact.

XVI. COVERAGE—PROPERTY INSURANCE.**(A) IN GENERAL.**

2125. In general.
 2126. Mandatory coverage.
 2127. Commencement or trigger of coverage.
 2128. Duration of coverage.
 2129. Persons covered; ownership of property.
 2130. Property covered or excluded.
 2131. — In general.
 2132. — Title, interest, possession or custody.
 2133. — Use or occupancy of premises; vacancy.
 2134. — Structures.
 (1). In general.
 (2). Buildings; construction.
 (3). Appurtenances.
 2135. — Fixtures.
 2136. — Personal property.
 (1). In general.
 (2). Household goods or furniture.
 (3). Merchandise or stock in trade.
 (4). Tools, implements or equipment.
 (5). Automobiles.
 2137. — Place or location of property; territorial restrictions.
 (1). In general.
 (2). Change of location.
 (3). Property in transit or storage.
 2138. — Newly acquired property.
 (1). In general.
 (2). Notice.
 2139. Risks or losses covered and exclusions.
 2140. — In general.
 2141. — Accident, occurrence or event.
 2142. — Water damage.
 (1). In general.
 (2). Precipitation; hail.
 (3). Freezing.
 (4). Underground water in general.
 (5). Surface water; flood exclusions.
 (6). Sewers and drains; plumbing.
 2143. — Fire or smoke.
 (1). In general.

XVI. COVERAGE—PROPERTY INSURANCE.(Cont'd)

- (2). Friendly or hostile origin.
 2144. — Movement of earth or structure.
 (1). In general.
 (2). Earthquakes.
 (3). Subsidence.
 2145. — Wind.
 2146. — Corrosion or deterioration; mold or fungus.
 2147. — Mechanical breakdown.
 2148. — Pollution or contamination.
 2149. — Power failure.
 2150. — Collapse.
 2151. — Explosion.
 2152. — Disappearance.
 2153. — Theft or burglary.
 (1). In general.
 (2). Forcible entry; visible marks.
 (3). Voluntary parting with possession.
 (4). Jewelry, antiques or similar items.
 2154. — Vandalism.
 2155. — Collision; vehicles.
 (1). In general.
 (2). Falling objects.
 2156. — Faulty workmanship or materials.
 2157. — Acts of government or governmental actors.
 2158. — Ordinance or law.
 2159. — War or civil commotion; riot.
 2160. — Animals.
 (1). In general.
 (2). Damage caused by animals.
 (3). Loss of, or injury to, animals.
 2161. — Loss of collateral.
 2162. — Loss of use in general; related expenses.
 2163. — Business interruption; lost profits.
 (1). In general.
 (2). Loss of use.
 (3). Loss of rent.
 2164. — Inventories.
 2165. — Proximate cause.
 (1). In general.
 (2). Combined or concurrent causes.
 2166. — Acts of insureds or related entities.
 (1). In general.

217. INSURANCE**XVI. COVERAGE—PROPERTY INSURANCE.**(Cont'd)

- (2). Wrongful or intentional acts.
- (3). Arson or incendiarism.
- (4). Unintentional acts.
- 2167. Amount of insurance.
- 2168. — In general.
- 2169. — Scheduling; reporting clauses.
- 2170. — Deductible amounts; coinsurance.
- 2171. — Valued policies.
- 2172. — Replacement.
- 2173. Amount of damage or loss.
- 2174. — In general.
- 2175. — Actual total loss.
- 2176. — Constructive total loss.
- 2177. — Partial loss.
- 2178. — Loss of use in general.
- 2179. — Business interruption; lost profits.
 - (1). In general.
 - (2). Loss of use.
 - (3). Loss of rent.
- 2180. Valuation.
- 2181. — In general.
- 2182. — Real property.
- 2183. — Personal property.
- 2184. Repair or replacement.
- 2185. — In general.
- 2186. — Election to restore, repair or take property.
- 2187. Extent of interest insured.
- 2188. Other insurance.
- 2189. — In general.
- 2190. — What is other insurance.
- 2191. — Primary or excess insurance in general.
- 2192. — Escape clauses.
- 2193. — Proration or allocation.
- 2194. Credits, deductions and offsets.
- 2195. Minimizing loss.
- 2196. Evidence.
- 2197. — In general.
- 2198. — Presumptions.
- 2199. — Burden of proof.
- 2200. — Admissibility.
- 2201. — Weight and sufficiency.
- 2202. Questions of law or fact.

(B) CROP INSURANCE.

- 2203. In general.
- 2204. Risks or losses.
- 2205. Amounts payable.
- 2206. Government reinsurance.
- 2207. Evidence.
- 2208. Questions of law or fact.

(C) FLOOD INSURANCE.

- 2209. In general.
- 2210. Risks or losses.
- 2211. Amounts payable; other insurance.
- 2212. Evidence.
- 2213. Questions of law and fact.

(D) OCEAN MARINE INSURANCE.

- 2214. In general.
- 2215. Property covered.
- 2216. — In general.
- 2217. — Property in transit; cargo.
- 2218. Risks covered and exclusions.
- 2219. — In general.
- 2220. — Perils of the sea.
 - (1). In general.
 - (2). Stranding.
- 2221. — Perils of rivers, lakes and inland waters.
- 2222. — Fire.
- 2223. — War and civil commotion; riot.
- 2224. — Theft.
- 2225. — Arrest, restraint and detention.
- 2226. — Barratry.
- 2227. — Collision.
- 2228. — Inherent causes.
- 2229. — Unseaworthiness.
- 2230. — Proximate cause.
- 2231. — Negligence.
- 2232. — Wrongful acts.
- 2233. Losses and amounts payable.
- 2234. — In general.
- 2235. — Actual total loss.
- 2236. — Constructive total loss.
- 2237. — Abandonment.
- 2238. — Partial loss in general.
- 2239. — Valuation.
- 2240. — General average contribution.
- 2241. — Particular average or partial loss.
- 2242. — Duties of owners, masters or crew after loss.

217. INSURANCE**XVI. COVERAGE—PROPERTY
INSURANCE.(Cont'd)**

- 2243. — Salvage.
- 2244. — Repair.
- 2245. — Expenditures.
 - (1). In general.
 - (2). Sue and labor clauses.
- 2246. — Loss of use or income.
- 2247. — Other insurance.
 - (1). In general.
 - (2). What is other insurance.
 - (3). — In general.
 - (4). — Types.
 - (5). — Validity or enforceability.
 - (6). Proration or allocation.
- 2248. — Deductible amounts.
- 2249. — Credits, deductions and offsets.
- 2250. Evidence.
- 2251. — In general.
- 2252. — Presumptions.
- 2253. — Burden of proof.
- 2254. — Admissibility.
- 2255. — Weight and sufficiency.
- 2256. Questions of law or fact.

XVII. COVERAGE—LIABILITY INSURANCE.**(A) IN GENERAL.**

- 2260. In general.
- 2261. Public policy limitations in general.
- 2262. Mandatory coverage.
- 2263. Commencement and duration of coverage.
- 2264. — In general.
- 2265. — Continuous acts and injuries; trigger.
- 2266. — Claims made policies.
- 2267. Insurer's duty to indemnify in general.
- 2268. — In general.
- 2269. — Insured's liability for damages.
- 2270. — Defense costs, supplementary payments and related expenses.
 - (1). In general.
 - (2). Pre-tender expenses.
- 2271. — Accrual; conditions precedent.
- 2272. Persons covered.
- 2273. Risks and losses.
- 2274. — In general.
- 2275. — Accident, occurrence or event.
- 2276. — Bodily injury.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2277. — Property damage.
- 2278. — Common exclusions.
 - (1). In general.
 - (2). Intentional acts or injuries; crimes and abuse.
 - (3). — In general.
 - (4). — Criminal acts.
 - (5). — Assault and battery.
 - (6). — Sexual acts or abuse.
 - (7). Punitive damages.
 - (8). Contractual liabilities.
 - (9). Business pursuits.
 - (10). Professional services.
 - (11). Employment related exclusions.
 - (12). Workers' compensation.
 - (13). Vehicles and related equipment.
 - (14). Aircraft and aviation.
 - (15). Watercraft.
 - (16). Intoxicants.
 - (17). Pollution.
 - (18). War or nuclear incidents.
 - (19). Premises and operations hazards.
 - (20). Products and completed operations hazards.
 - (21). — In general.
 - (24). — Product recalls; sistership.
 - (25). Property of insured.
 - (26). — In general.
 - (27). — Owned property.
 - (28). — Alienated property.
 - (29). — Personal property in care, custody or control.
- 2279. Amounts payable.
- 2280. — In general.
- 2281. — Limits of liability.
 - (1). In general.
 - (2). Several injuries.
 - (3). Attorney fees and costs; interest.
- 2282. — Deductibles.
- 2283. — Self-insured retentions.
- 2284. — Severability.
- 2285. — Other insurance.
 - (1). In general.
 - (2). Primary and excess insurance.
 - (3). Proration and allocation.
 - (4). — In general.
 - (5). — By policy limits.

217. INSURANCE**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- (6). — Contribution by equal shares.
- (7). — Maximum loss; amounts otherwise payable.
- (8). Escape clauses.
- 2286. — Credits, deductions and offsets.
- 2287. Evidence.
- 2288. — In general.
- 2289. — Presumptions.
- 2290. — Burden of proof.
- 2291. — Admissibility.
- 2292. — Weight and sufficiency.
- 2293. Questions of law or fact.
- (B) COVERAGE FOR PARTICULAR LIABILITIES.**
- 2294. In general.
- 2295. Premises and operations hazards.
- 2296. Products and completed operations hazards.
- 2297. Advertising injury.
- 2298. — In general.
- 2299. — Defamation or disparagement.
- 2300. — Violation of privacy rights.
- 2301. — Misappropriation.
- 2302. — Infringement.
- 2303. — Particular exclusions.
 - (1). In general.
 - (2). Known falsity.
 - (3). Prior publication.
 - (4). Media-related business.
- 2304. — Evidence.
- 2305. — Questions of law or fact.
- 2306. Personal injury.
- 2307. — In general.
- 2308. — False arrest, detention or imprisonment.
- 2309. — Malicious prosecution.
- 2310. — Wrongful entry or eviction.
- 2311. — Defamation or disparagement.
- 2312. — Violation of privacy rights.
- 2313. — Particular exclusions.
 - (1). In general.
 - (2). Known falsity.
 - (3). Prior publication.
- 2314. — Evidence.
- 2315. — Questions of law or fact.
- 2316. Contractually assumed liabilities.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2317. Employers' liabilities.
- 2318. — In general.
- 2319. — Scope of coverage.
- 2320. — Particular exclusions.
- 2321. — Evidence.
- 2322. — Questions of law or fact.
- 2323. Environmental liabilities; pollution.
- 2324. — In general.
- 2325. — Scope of coverage.
- 2326. — Particular exclusions.
- 2327. — Evidence.
- 2328. — Questions of law or fact.
- 2329. Airport, aircraft and aviation liabilities.
- 2330. — In general.
- 2331. — Scope of coverage.
- 2332. — Particular exclusions.
- 2333. — Evidence.
- 2334. — Questions of law or fact.
- 2335. Bar and restaurant owners' liabilities; intoxicants.
- 2336. — In general.
- 2337. — Scope of coverage.
- 2338. — Particular exclusions.
- 2339. — Evidence.
- 2340. — Questions of law or fact.
- 2341. Farm and ranch liabilities.
- 2342. — In general.
- 2343. — Scope of coverage.
- 2344. — Particular exclusions.
- 2345. — Evidence.
- 2346. — Questions of law or fact.
- 2347. Governmental liabilities.
- 2348. — In general.
- 2349. — Scope of coverage.
- 2350. — Particular exclusions.
 - (1). In general.
 - (2). Law enforcement activities.
- 2351. — Evidence.
- 2352. — Questions of law or fact.
- 2353. Homeowners' liabilities.
- 2354. — In general.
- 2355. — Scope of coverage.
- 2356. — Particular exclusions.
- 2357. — Evidence.
- 2358. — Questions of law or fact.
- 2359. Manufacturers' or contractors' liabilities.

217. INSURANCE**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2360. — In general.
- 2361. — Scope of coverage.
- 2362. — Particular exclusions.
- 2363. — Evidence.
- 2364. — Questions of law or fact.
- 2365. Ocean marine liabilities.
- 2366. — In general.
- 2367. — Scope of coverage.
- 2368. — Particular exclusions.
- 2369. — Evidence.
- 2370. — Questions of law or fact.
- 2371. Owners', landlords' and tenants' liabilities.
- 2372. — In general.
- 2373. — Scope of coverage.
- 2374. — Particular exclusions.
- 2375. — Evidence.
- 2376. — Questions of law or fact.
- 2377. Directors' and officers' liabilities.
- 2378. — In general.
- 2379. — Scope of coverage.
- 2380. — Particular exclusions.
 - (1). In general.
 - (2). Regulatory exclusions.
 - (3). Disputes among insureds.
- 2381. — Evidence.
- 2382. — Questions of law or fact.
- 2383. Errors and omissions liabilities.
- 2384. — In general.
- 2385. — Scope of coverage.
- 2386. — Particular exclusions.
- 2387. — Evidence.
- 2388. — Questions of law or fact.
- 2389. Professional malpractice liabilities.
- 2390. — In general.
- 2391. — Particular professions.
 - (1). In general.
 - (2). Law.
 - (3). Medicine and health.
 - (4). — In general.
 - (5). — Mental health care.
 - (6). Accountancy.
 - (7). Architects and engineers.
- 2392. — Evidence.
- 2393. — Questions of law or fact.
- 2394. Excess and umbrella liability coverage.
- 2395. — In general.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2396. — Scope of coverage.
- 2397. — Particular exclusions.
- 2398. — Evidence.
- 2399. — Questions of law or fact.

**XVIII. COVERAGE—FIDELITY AND
GUARANTY INSURANCE.**

- 2400. In general.
- 2401. Commencement and duration of coverage in general.
- 2402. Discovery or knowledge of loss.
- 2403. Persons covered.
- 2404. Risks covered and exclusions.
- 2405. — In general.
- 2406. — Employee fraud or dishonesty.
 - (1). In general.
 - (2). Who are employees.
 - (3). Nature of acts covered; intent.
 - (5). Loss to insured; causation.
 - (6). Benefit to employees or others.
- 2407. Amounts payable.
- 2408. Indemnification for costs and fees.
- 2409. Other insurance.
- 2410. — In general.
- 2411. — Proration or allocation.
- 2412. Evidence.
- 2413. Questions of law or fact.

XIX. COVERAGE—LIFE INSURANCE.

- 2420. In general.
- 2421. Persons covered.
- 2422. Groups covered.
- 2423. Mandatory coverage.
- 2424. Commencement of coverage.
- 2425. Duration of coverage.
- 2426. Time of death.
- 2427. Cause of death in general.
- 2428. Preexisting conditions.
- 2429. Particular risks and exceptions.
- 2430. — In general.
- 2431. — Military service; war.
- 2432. — Travel and conveyances.
 - (1). In general.
 - (2). Aviation.
- 2433. — Violation of law; capital punishment.
- 2434. — Suicide.

217. INSURANCE**XIX. COVERAGE—LIFE INSURANCE.**(Cont'd)

- (1). In general.
- (2). Mental condition.
- 2435. — Voluntary or unnecessary exposure to danger.
 - (1). In general.
 - (2). Drugs or intoxicants.
 - (3). Sexual activities.
 - (4). Fighting, rioting or similar behavior.
- 2436. — Acts of third persons.
 - (1). In general.
 - (2). Participation or provocation by insured.
- 2437. — Other matters.
- 2438. Accelerated or living benefits.
- 2439. Measure or amount of recovery.
- 2440. Amount of paid-up policy.
- 2441. Share in tontine fund.
- 2442. Credits, deductions and offsets.
- 2443. Election between rights.
- 2444. Other insurance.
- 2445. Evidence.
- 2446. Questions of law or fact.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.**(A) IN GENERAL.**

- 2450. In general.

(B) MEDICAL INSURANCE.

- 2451. In general.
- 2452. Mandatory coverage.
- 2453. Government sponsored insurance.
- 2454. Commencement of coverage.
- 2455. Duration of coverage.
- 2456. — In general.
- 2457. — Group insurance.
 - (1). In general.
 - (2). Termination of employment in general.
 - (3). Disability.
 - (4). Notice.
- 2458. Persons covered.
- 2459. — In general.
- 2460. — Group insurance.
- 2461. Illness, sickness or accident in general.
- 2462. Self-inflicted injuries.
- 2463. Employment-related conditions.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.(Cont'd)

- 2464. Diseases or conditions covered or excluded.
- 2465. — In general.
- 2466. — Pregnancy or childbirth.
 - (1). In general.
 - (2). Infertility.
- 2467. — Cancer or tumors.
- 2468. — Heart or circulatory disorders.
- 2469. — Diabetes and other metabolic disorders.
- 2470. — Immune system disorders (HIV and AIDS).
- 2471. — Mental or emotional disorders.
 - (1). In general.
 - (2). Drug or narcotic addiction or abuse.
 - (3). Alcoholism.
- 2472. — Teeth, mouth or jaw conditions.
- 2473. — Vision or hearing.
- 2474. Preexisting conditions.
- 2475. — In general.
- 2476. — Diagnosis.
- 2477. — Heart or circulatory disorders.
- 2478. — Cancer or tumors.
- 2479. — Mental or emotional disorders.
- 2480. Medical necessity.
- 2481. — In general.
- 2482. — Determination.
- 2483. Treatments or services covered.
- 2484. — In general.
- 2485. — Experimental or investigational treatments or procedures.
- 2486. — Preventative or diagnostic measures.
 - (1). In general.
 - (2). Mammograms or pap smears.
 - (3). Child wellness measures.
 - (4). — In general.
 - (5). — Screening tests.
 - (6). — Immunizations.
- 2487. — Surgical procedures.
 - (1). In general.
 - (2). Cosmetic or reconstructive procedures.
 - (3). Organ or tissue transplants.
- 2488. — Kidney dialysis.
- 2489. — Family planning services.

217. INSURANCE**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- (1). In general.
- (2). Measures to overcome infertility.
- (3). Sterilization.
- (4). Abortion.
- 2490. — Mental or emotional disorder treatments.
 - (1). In general.
 - (2). Drug or narcotic addiction.
 - (3). Alcoholism.
- 2491. — Rehabilitative treatment.
- 2492. — Ambulance or other transportation services.
- 2493. Settings for care; service organizations.
- 2493.1. — In general.
- 2494. — In-patient hospital treatment.
 - (1). In general.
 - (2). Mental or emotional disorders.
- 2495. — Out-patient treatment.
 - (1). In general.
 - (2). Free-standing surgical facilities.
- 2496. — Emergency room treatment.
- 2497. — Skilled nursing or extended care facilities.
- 2498. — Nursing homes or convalescent facilities.
- 2499. — Hospices.
- 2500. — Home health care; alternative long-term care.
- 2501. — Provider networks or other managed care organizations.
- 2502. Types of practitioners rendering services.
- 2503. — In general.
- 2504. — Medical doctors.
- 2505. — Osteopaths.
- 2506. — Naturopaths.
- 2507. — Chiropractors.
- 2508. — Nurses.
- 2509. — Psychotherapists, psychologists or social workers.
- 2510. Drugs and medicines.
- 2511. — In general.
- 2512. — Experimental drugs or uses.
- 2513. — Non-prescription medicines.
- 2514. Medical devices or structures.
- 2515. — In general.
- 2516. — Transportation equipment.

**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- 2517. — Wheelchairs.
- 2518. — Homes.
 - (1). In general.
 - (2). Furniture.
 - (3). Fixtures.
- 2519. Non-contractual benefits.
- 2520. Amounts payable.
- 2521. — In general.
- 2522. — Policy limits; restoration of benefits.
- 2523. — Deductible amounts and co-payments.
- 2524. — Reasonable and customary charges.
- 2525. — Other insurance or benefits; coordination.
 - (1). In general.
 - (2). Proration or allocation.
- 2526. — Credits, deductions and offsets.
- 2527. Evidence.
- 2528. — In general.
- 2529. — Presumptions.
- 2530. — Burden of proof.
- 2531. — Admissibility.
- 2532. — Weight and sufficiency.
- 2533. Questions of law or fact.

(C) DISABILITY INSURANCE.

- 2534. In general.
- 2535. Mandatory coverage.
- 2536. Commencement of coverage.
- 2537. Duration of coverage.
- 2538. Persons covered.
- 2539. Preexisting conditions.
- 2540. Risks covered and exclusions.
- 2541. — In general.
- 2542. — Travel and conveyances.
 - (1). In general.
 - (2). Aviation.
- 2543. — Occupation or employment.
- 2544. — Diseases or conditions.
 - (1). In general.
 - (2). Heart conditions.
 - (3). Mental conditions; substance abuse.
- 2545. — External, violent or accidental causes.

217. INSURANCE**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- (1). In general.
- (2). What constitutes accident.
- (3). Time of disability relative to accident.
- (4). — In general.
- (5). — Process of nature.
- 2546. — External or visible signs of injury.
- 2547. — Poison.
- 2548. — Gas.
- 2549. — Voluntary or unnecessary exposure to danger.
- 2550. — Violation of law in general.
- 2551. — Injuries caused by insured.
 - (1). In general.
 - (2). Negligence.
 - (3). Intentional or self-inflicted injuries.
 - (4). Injuries resulting from intoxication or substance abuse.
- 2552. — Injuries inflicted by others.
 - (1). In general.
 - (2). Assaults and batteries.
 - (3). Provocation.
- 2553. Nature or degree of disability.
- 2554. — In general.
- 2555. — Confinement to home or bed.
- 2556. — Care of physician.
- 2557. — Partial disability in general.
- 2558. — Particular or scheduled disabilities.
 - (1). In general.
 - (2). Impairment of sight or hearing.
 - (3). Injury to, or loss of, limbs.
 - (4). Mental or emotional disorders.
- 2559. — Immediate disability.
- 2560. — Period of disability.
 - (1). In general.
 - (2). Permanent or continuous disability.
- 2561. — Total disability.
 - (1). In general.
 - (2). Regular, customary or ordinary occupation.
 - (3). Substantial or material performance.
 - (4). Comparable employment or occupation.

**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- (5). Ability to engage in any occupation.
 - 2562. — Cure or recovery.
 - 2563. Remediation of disability.
 - 2564. — In general.
 - 2565. — Submission to treatment.
 - 2566. Waiting periods.
 - 2567. Amounts payable.
 - 2568. — In general.
 - 2569. — Duration of benefit period.
 - 2570. — Other insurance.
 - 2571. — Credits, deductions and offsets.
 - 2572. — Election between rights.
 - 2573. Evidence.
 - 2574. — In general.
 - 2575. — Presumptions.
 - 2576. — Burden of proof.
 - 2577. — Admissibility.
 - 2578. — Weight and sufficiency.
 - 2579. Questions of law or fact.
- (D) ACCIDENT INSURANCE.**
- 2580. In general.
 - 2581. Mandatory coverage.
 - 2582. Commencement of coverage.
 - 2583. Duration of coverage.
 - 2584. Persons covered.
 - 2585. Risks covered or excluded.
 - 2586. — In general.
 - 2587. — Military service; war.
 - 2588. — Travel and conveyances.
 - (1). In general.
 - (2). Automobiles.
 - (3). Aviation.
 - 2589. — Diseases or conditions; medical treatment.
 - (1). In general.
 - (2). Heart conditions.
 - (3). Mental conditions; chemical dependency.
 - 2590. — External, violent or accidental causes.
 - (1). In general.
 - (2). What constitutes accident.
 - (3). Time of disability or death relative to accident.
 - (4). — In general.

217. INSURANCE**XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.**(Cont'd)

- (5). — Process of nature.
- 2591. — External or visible signs of injury.
- 2592. — Voluntary or unnecessary exposure to danger.
- 2593. — Violation of law in general.
- 2594. — Injuries caused by insured.
 - (1). In general.
 - (2). Intentional or self-inflicted injuries.
 - (3). Negligence.
 - (5). Suicide.
- 2594.5. — Intoxication and substance abuse; overdose.
- 2595. — Injuries inflicted by others.
 - (1). In general.
 - (2). Assaults and batteries.
 - (3). Provocation.
- 2596. — Sexual activities.
- 2597. Amounts payable.
- 2598. — In general.
- 2599. — Double or increased indemnity.
- 2600. — Other insurance.
 - (1). In general.
 - (2). Proration or allocation.
- 2601. — Credits, deductions and offsets.
- 2602. Evidence.
- 2603. — In general.
- 2604. — Presumptions.
- 2605. — Burden of proof.
- 2606. — Admissibility.
- 2607. — Weight and sufficiency.
- 2608. Questions of law or fact.

XXI. COVERAGE—TITLE INSURANCE.

- 2610. In general.
- 2611. Mandatory coverage.
- 2612. Commencement of coverage.
- 2613. Duration of coverage.
- 2614. Property covered.
- 2615. Title defects.
- 2616. — In general.
- 2617. — Marketable title in general.
- 2618. — Prior ownership; persons in possession.
- 2619. — Liens and encumbrances in general.
- 2620. — Mortgages.

XXI. COVERAGE—TITLE INSURANCE.(Cont'd)

- 2621. — Mechanics' liens.
- 2622. — Tax liens.
- 2623. — Lis pendens.
- 2624. — Judgments and judgment liens.
- 2625. — Zoning or other land use restrictions.
- 2626. — Easements.
- 2627. — Encroachments.
- 2628. — Recording errors.
- 2629. — Defects created by, or known to, insured.
- 2630. Closing or settlement protection.
- 2631. Insurers' duties upon discovery of defect.
- 2632. — In general.
- 2633. — Removal.
- 2634. Amounts payable.
- 2635. — In general.
- 2636. — Amount of insurance; policy limits.
- 2637. — Amount of damage.
 - (1). In general.
 - (2). Easements.
 - (3). Judgments.
 - (4). Mortgages.
- 2638. — Other insurance.
- 2639. Evidence.
- 2640. Questions of law or fact.

XXII. COVERAGE—AUTOMOBILE INSURANCE.**(A) IN GENERAL.**

- 2645. In general.
- 2646. Mandatory coverage.
- 2647. Commencement of coverage.
- 2648. Duration of coverage.
- 2649. Risks and exclusions in general.
- 2650. Territorial and premises restrictions; nonresidents.
- 2651. Automobiles covered.
- 2652. — In general.
- 2653. — Nature of automobile.
- 2654. — Automobiles not in policy in general.
- 2655. — Newly acquired automobiles.
 - (1). In general.
 - (2). Notice to insurer.

217. INSURANCE

XXII. COVERAGE—AUTOMOBILE INSURANCE.(Cont'd)

2656. — Nonowned automobiles in general.

2657. — Regular or frequent use.

2658. — Substitute automobiles.

2659. — Hired automobiles.

2660. Persons covered.

2660.5. — In general.

2661. — Family members; household.

2662. Permission.

2663. — In general.

2664. — Implied permission in general.

2665. — Reasonable belief.

2666. — Person giving permission; second-hand permission.

2667. — Deviation from permissive use.

2668. Occupancy of vehicle.

2669. — In general.

2670. — Uninsured or underinsured motorist coverage.

2671. — No-fault coverage.

2672. Nature and cause of injury or damage.

2673. — In general.

2674. — Accident in general.

2675. — Willful, intentional, or illegal acts.

2676. Ownership, maintenance, operation, or use.

2677. — In general.

2678. — Liability coverage.

2679. — Uninsured or underinsured motorist coverage.

2680. — No-fault coverage.

2681. Loading or unloading.

2682. Purpose and manner of use.

2683. — In general.

2684. — Business use in general.

2685. — Renting vehicle.

2686. — Carrying passengers for consideration.

2687. — Towing trailer.

2688. Extent of loss or liability in general.

2689. Evidence.

2690. — In general.

2691. — Presumptions.

2692. — Burden of proof.

2693. — Admissibility.

2694. — Weight and sufficiency.

2695. Questions of law or fact.

(B) PROPERTY COVERAGE.

2696. In general.

2697. Mandatory coverage.

2698. Property covered or excluded.

2699. — In general.

2700. — Trailers.

2701. — Property in or on vehicle.

2702. Risks and losses covered or excluded.

2703. — In general.

2704. — Collision.

2705. — Missiles or falling objects.

2706. — Theft, burglary, or false pretenses.

(1). In general.

(2). Forcible entry; visible marks.

(3). Voluntary parting with possession.

2707. — Weather damage; water.

2708. — Fire.

2709. — Vandalism or malicious mischief.

2710. — Racing, contests, or stunts.

2711. — Proximate cause; concurrent causes.

2712. — Loss of use.

(1). In general.

(2). Transportation expenses.

(3). Lost profits.

2713. Amount of insurance.

2714. — In general.

2715. — Policy limits.

2716. — Deductible amounts.

2717. Amounts payable; extent of damage or loss.

2718. — In general.

2719. — Total or partial loss.

(1). In general.

(2). Repair or replacement.

2720. — Valuation.

2721. — Loss of use.

2722. — Expenditures.

2723. Extent of interest insured.

2724. Other insurance.

2725. Credits, deductions, and offsets.

2726. Minimizing loss.

2727. Evidence.

2728. — In general.

2729. — Presumptions.

2730. — Burden of proof.

2731. — Admissibility.

217. INSURANCE**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

2732. — Weight and sufficiency.
2733. Questions of law or fact.

(C) LIABILITY COVERAGE.

2734. In general.
2735. Mandatory coverage.
2736. — In general.
2737. — Financial responsibility requirements.
2738. Insurer's duty to indemnify in general.
2739. — In general.
2740. — Insured's liability for damages.
2741. — Defense costs, supplementary payments, and related expenses.
 (1). In general.
 (2). Pre-tender expenses.
2742. Risks, losses, and exclusions in general.
2743. Persons injured.
2744. — In general.
2745. — Insured persons.
2747. — Family members; household.
2748. — Employees.
 (1). In general.
 (2). Fellow employees.
2749. — Guests or occupants.
2750. Property damaged.
2751. — In general.
2752. — Property owned by, rented to, or in charge of, insured.
2753. Punitive damages.
2754. Amount of coverage.
2755. — In general.
2756. — Limits of liability.
 (1). In general.
 (2). Out of state.
 (3). Several injuries.
 (4). Attorney fees and costs; interest.
2757. — Deductible amounts.
2758. Amounts payable in general.
2759. Other insurance.
2760. — In general.
2761. — Primary and excess insurance.
2762. — Proration and allocation.
 (1). In general.
 (2). By policy limits.
 (3). Contribution by equal shares.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- (4). Maximum loss; amounts otherwise payable.
2763. — Escape clauses.
2764. Credits, deductions, and offsets.
2765. Evidence.
2766. — In general.
2767. — Presumptions.
2768. — Burden of proof.
2769. — Admissibility.
2770. — Weight and sufficiency.
2771. Questions of law or fact.

**(D) UNINSURED OR UNDERINSURED
MOTORIST COVERAGE.**
2772. In general.
2773. Mandatory coverage.
2774. — In general.
2775. — Mandatory offering in general.
2776. — Self-insurers.
2777. — Public agencies.
2778. — Acceptance or rejection.
2779. — Effect of failure to offer, inadequate offer, or inadequate rejection.
 (1). In general.
 (2). Amount of coverage.
2780. Risks, losses and exclusions in general.
2781. Necessity of tort liability.
2782. — In general.
2783. — Need to file suit.
2784. — Physical contact requirement.
2785. Uninsured motorists or vehicles.
2786. — In general.
2787. — Underinsurance; exhausted coverage.
2788. — Effect of insurer's insolvency.
2789. Determination of tort liability; actions and settlements.
2790. — In general.
2791. — Notice of tort action.
2792. — Insurer's consent to tort action.
2793. — Settlement of tort actions.
 (1). In general.
 (2). Insurer's consent to settlement.
 (3). Settlement for less than policy limits.
2794. Amount of coverage.
2795. — In general.
2796. — Policy limits.

217. INSURANCE**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2797. Other insurance.
- 2798. — In general.
- 2799. — “Stacking”.
- 2800. — Primary and excess insurance in general.
- 2801. — Proration and allocation.
- 2802. — Escape clauses.
- 2803. Amounts payable in general.
- 2804. Credits, deductions, and offsets.
- 2805. — In general.
- 2806. — Recovery under other insurance.
- 2807. — Workers’ compensation.
- 2808. — Unemployment compensation.
- 2809. — Social security; welfare benefits.
- 2810. Evidence.
- 2811. — In general.
- 2812. — Presumptions.
- 2813. — Burden of proof.
- 2814. — Admissibility.
- 2815. — Weight and sufficiency.
 - (1). In general.
 - (3). Physical contact and unknown vehicles in general.
 - (4). Corroboration; independent or disinterested witness.
- 2816. Questions of law or fact.

(E) NO-FAULT COVERAGE; MEDICAL PAYMENTS.

- 2817. In general.
- 2818. Mandatory coverage.
- 2819. — In general.
- 2820. — Mandatory offering in general.
- 2821. — Self-insurers.
- 2822. — Public agencies.
- 2823. — Acceptance or rejection.
- 2824. — Effect of failure to offer, inadequate offer, or inadequate rejection.
 - (1). In general.
 - (2). Amount of coverage.
- 2825. — Effect on claimant of claimant’s failure to obtain coverage.
- 2826. Risks and exclusions in general.
- 2827. Losses covered.
- 2828. — In general.
- 2829. — Loss of work, income, or profits.
- 2830. — Survivors’ benefits; loss of services.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2831. — Health care expenses or services provided.
 - (1). In general.
 - (2). Mental or emotional injury.
 - (3). Rehabilitation.
 - (4). Lapse in treatment.
 - 2832. — Funeral expenses.
 - 2833. — Other expenditures.
 - 2834. Amount of coverage.
 - 2835. — In general.
 - 2836. — Policy limits.
 - 2837. Amounts payable in general.
 - 2838. Other insurance.
 - 2839. — In general.
 - 2840. — “Stacking”.
 - 2841. — Primary and excess insurance.
 - 2842. — Proration and allocation.
 - 2843. — Escape clauses.
 - 2844. Credits, deductions, and offsets.
 - 2845. — In general.
 - 2846. — Recovery under other insurance.
 - 2847. — Workers’ compensation.
 - 2848. — Unemployment compensation.
 - 2849. — Social security; welfare benefits.
 - 2850. Evidence.
 - 2851. — In general.
 - 2852. — Presumptions.
 - 2853. — Burden of proof.
 - 2854. — Admissibility.
 - 2855. — Weight and sufficiency.
 - 2856. Questions of law or fact.
- (F) GARAGE OR AUTOMOBILE SERVICE LIABILITY.**
- 2857. In general.
 - 2858. Mandatory coverage.
 - 2859. Risks, losses, and exclusions in general.
 - 2860. Premises covered.
 - 2861. Vehicles covered.
 - 2862. — In general.
 - 2863. — Vehicle leased to customer or others.
 - 2864. Persons covered.
 - 2865. — In general.
 - 2866. — Customers.
 - 2867. Operations and uses covered.
 - 2868. Persons injured.
 - 2869. — In general.

217. INSURANCE**XXII. COVERAGE—AUTOMOBILE
INSURANCE.**(Cont'd)

- 2870. — Employees.
- 2871. Property damaged.
- 2872. — In general.
- 2873. — Property in custody.
- 2874. Amount of insurance.
- 2875. — In general.
- 2876. — Policy limits.
 - (1). In general.
 - (2). Out of state.
- 2877. Amounts payable in general.
- 2878. Other insurance.
- 2879. Credits, deductions, and offsets.
- 2880. Evidence.
- 2881. — In general.
- 2882. — Presumptions.
- 2883. — Burden of proof.
- 2884. — Admissibility.
- 2885. — Weight and sufficiency.
- 2886. Questions of law or fact.

(G) TRUCKERS' AND MOTOR CARRIERS' LIABILITY.

- 2887. In general.
- 2888. Mandatory coverage.
- 2889. Risks, losses, and exclusions in general.
- 2890. Vehicles covered.
- 2891. Persons covered.
- 2892. Operations and uses covered.
- 2893. — In general.
- 2894. — Business restrictions.
- 2895. Persons or property injured or damaged.
- 2896. Amount of insurance.
- 2897. — In general.
- 2898. — Policy limits.
 - (1). In general.
 - (2). Out of state.
- 2899. Amounts payable in general.
- 2900. Other insurance.
- 2901. Credits, deductions, and offsets.
- 2902. Evidence.
- 2903. — In general.
- 2904. — Presumptions.
- 2905. — Burden of proof.
- 2906. — Admissibility.
- 2907. — Weight and sufficiency.
- 2908. Questions of law or fact.

XXIII. DUTY TO DEFEND.

- 2911. In general; nature and source of duty.
- 2912. Determination of duty.
- 2913. — In general; standard.
- 2914. — Pleadings.
- 2915. — Matters beyond pleadings.
- 2916. Commencement of duty; conditions precedent.
- 2917. — In general.
- 2918. — Claim, suit, or demand for damages.
- 2919. — Tender or other notice.
- 2920. Scope of duty.
- 2921. — In general.
- 2922. — Several grounds or causes of action.
 - (1). In general.
 - (2). Allocation.
- 2923. — Effect of other insurance.
- 2924. — Postjudgment relief.
- 2925. Fulfillment of duty and conduct of defense.
- 2926. — In general.
- 2927. — Insurer's options in general.
- 2928. — Right to control defense.
- 2929. — Conflicts of interest; independent counsel.
- 2930. Termination of duty; withdrawal.
- 2931. Bad faith.
- 2932. Effect of breach.
- 2933. — In general.
- 2934. — Amounts recoverable from insurer.
 - (1). In general.
 - (2). Underlying defense costs.
 - (3). Underlying judgment; other losses.
 - (4). Bad faith; punitive damages.
- 2935. Title insurance.
- 2936. Evidence.
- 2937. — In general.
- 2938. — Presumptions.
- 2939. — Burden of proof.
- 2940. — Admissibility.
- 2941. — Weight and sufficiency.
- 2942. Questions of law or fact.

217. INSURANCE**XXIV. AVOIDANCE.****(A) IN GENERAL.**

- 2950. In general.
- 2951. Grounds for avoidance in general.
- 2952. Fraud or false swearing in general.
- 2953. Representations.
- 2954. — In general.
- 2955. — Nature and effect in general.
- 2956. — Construction in general.
- 2957. — Falsity.
- 2958. — Materiality.
- 2959. — Knowledge or intent.
- 2960. — Reliance.
- 2961. Concealment or failure to disclose.
- 2962. — In general.
- 2963. — Nature and effect in general.
- 2964. — Materiality.
- 2965. — Knowledge or intent.
- 2966. — Reliance.
- 2967. Warranties.
- 2968. — In general.
- 2969. — Distinguished from representations.
- 2970. — Effect of breach.
- 2971. Conditions precedent.
- 2972. — In general.
- 2973. — Effect of insured's breach.
- 2974. Parties affected by avoidance.
- 2975. Return or tender of premiums.
- 2976. Evidence.
- 2977. — In general; admissibility.
- 2978. — Presumptions.
- 2979. — Burden of proof.
- 2980. — Weight and sufficiency.
- 2981. Attaching or supplying application.
- 2982. — In general.
- 2983. — As essential to avoidance.
- 2984. — As affecting admission of evidence.
- 2985. Questions of law or fact.

(B) PARTICULAR KINDS OF INSURANCE.

- 2986. In general.
- 2987. Property or title insurance.
- 2988. — In general.
- 2989. — Condition, location, or use of building or realty.
- 2990. — Description or condition of goods.

XXIV. AVOIDANCE.(Cont'd)

- 2991. — Amount or value.
- 2992. — Title or interest of insured.
 - (1). In general.
 - (2). Sole or unconditional ownership.
- 2993. — Encumbrances.
- 2994. — Solvency and financial condition.
- 2995. Ocean marine insurance.
- 2996. — In general.
- 2997. — Seaworthiness of vessel.
- 2998. Liability insurance.
- 2999. Fidelity and guaranty insurance.
- 3000. Life, health, and disability insurance.
- 3001. — In general.
- 3002. — Age.
- 3003. — Health and physical condition.
 - (1). In general.
 - (2). Representations and warranties distinguished.
 - (3). Knowledge and intent in general.
 - (4). Materiality in general.
 - (5). Reliance.
 - (6). — In general.
 - (7). — Effect of medical examination or lack thereof.
 - (8). Good or sound health.
 - (9). Serious, minor, or temporary conditions.
 - (10). Medical attendance or consultation.
 - (11). Particular diseases or conditions.
- 3004. Accident insurance.
- 3005. Automobile insurance.
- 3006. — In general.
- 3006.1. — Traffic violations and accidents.
- 3009. — Compulsory insurance and financial responsibility requirements, effect of.
- 3010. Evidence.
- 3011. — In general.
- 3012. — Presumptions.
- 3013. — Burden of proof.
- 3014. — Admissibility.
- 3015. — Weight and sufficiency.
- 3016. Questions of law or fact.
- (C) SPECIAL CIRCUMSTANCES AFFECTING RISK.**
- 3017. In general.
- 3018. Occupation.

217. INSURANCE**XXIV. AVOIDANCE.**(Cont'd)

- 3019. Habits.
- 3020. Interest and relationship of insured or beneficiary.
- 3021. Prior insurance claims or losses.
- 3022. Other insurance.
- 3023. — In general.
- 3024. — Application, rejection or cancellation.
- 3025. Evidence.
- 3026. Questions of law or fact.

XXV. FORFEITURE.**(A) IN GENERAL.**

- 3034. In general.
- 3035. Continuing or promissory representations.
- 3036. Continuing or promissory warranties.
- 3037. Conditions subsequent.
- 3038. — In general.
- 3039. — Effect of breach.
- 3040. Parties affected by forfeiture.
- 3041. Notice and proceedings to give effect to forfeiture in general.
- 3042. Return or tender of premiums.
- 3043. Obtaining additional insurance.
- 3044. Evidence.
- 3045. Questions of law or fact.

(B) PARTICULAR KINDS OF INSURANCE.

- 3046. In general.
- 3047. Property and title insurance.
- 3048. — In general.
- 3049. — Buildings.
 - (1). In general.
 - (2). Change in condition.
 - (3). Mode of use.
 - (4). Change in occupancy in general.
 - (5). Vacancy.
- 3050. — Personal property.
 - (1). In general.
 - (2). Change in value.
 - (3). Change of location; removal.
 - (4). Change of possession or use.
- 3051. — Change of title or interest.
- 3052. — Encumbrances and liens.
- 3053. — Precautions against loss in general.
- 3054. — Keeping books, papers, and safe.

XXV. FORFEITURE.(Cont'd)

- (1). In general.
- (2). Inventory.
- 3055. — Increase of risk or hazard.
 - (1). In general.
 - (2). "Moral hazard".
 - (3). Insured's control or knowledge.
- 3056. Ocean marine insurance.
- 3057. — In general.
- 3058. — Seaworthiness.
- 3059. — Use, voyage, and navigation of vessel.
- 3060. Liability insurance.
- 3061. Aviation insurance.
- 3062. — In general.
- 3063. — Airworthiness.
- 3064. — Qualifications or certification of pilot.
 - (1). In general.
 - (2). Medical certificate.
- 3065. Life, health, and accident insurance.
- 3066. Automobile insurance.
- 3067. Evidence.
- 3068. — In general.
- 3069. — Presumptions.
- 3070. — Burden of proof.
- 3071. — Admissibility.
- 3072. — Weight and sufficiency.
- 3073. Questions of law or fact.

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES.

Judicial estoppel, see ESTOPPEL ¶68.

- 3080. In general.
- 3081. Matters as to which assertable.
- 3082. Persons entitled to assert or benefit from.
- 3083. Effect in general.
- 3084. Powers and authority of officers and agents in general.
- 3085. Express waiver.
- 3086. Estoppel or implied waiver in general.
- 3087. Reliance or prejudice, necessity of.
- 3088. Knowledge or notice of facts in general.
- 3089. — In general; effect.
- 3090. — Duty to investigate.
- 3091. — Officers or agents; imputed knowledge.
- 3092. Statements of officers and agents in general.

217. INSURANCE**XXVI. ESTOPPEL AND WAIVER OF
INSURER'S DEFENSES.(Cont'd)**

- 3093. Acts and conduct of insurer or agents in general.
- 3094. Fault, collusion or fraud of agent.
- 3095. — In general.
- 3096. — Insertion of false statements; omissions.
 - (1). In general.
 - (2). Life, health and accident insurance.
- 3097. Issuance and delivery of policy.
- 3098. — In general.
- 3099. — Failure to deliver.
- 3100. — Issuing policy without inquiry or objection.
 - (1). In general; renewals.
 - (2). Failure to investigate in general.
 - (3). Life, health and accident insurance.
- 3101. Acts or omissions after issuing policy in general.
- 3102. — In general.
- 3103. — Failure to investigate.
- 3104. — Failure to make objection or assert forfeiture in general.
- 3105. Claims process and settlement.
- 3106. — In general.
- 3107. — Requiring, accepting, or retaining proofs of loss.
- 3108. — Investigation, examination, or inquiry.
- 3109. — Admission of liability on policy.
- 3110. — Denial or disclaimer of liability on policy.
 - (1). In general.
 - (2). Failure, delay, or inadequacy.
 - (3). Assertion of other ground of forfeiture or defense.
- 3111. — Defense of action against insured.
 - (1). In general.
 - (2). Defense without reservation of rights.
 - (3). Refusal, or breach of duty, to defend.
- 3112. — Adjustment, appraisal, or arbitration.
- 3113. — Promise to pay.
- 3114. — Payment of loss.
- 3115. Matters relating to premiums.

**XXVI. ESTOPPEL AND WAIVER OF
INSURER'S DEFENSES.(Cont'd)**

- 3116. — In general.
- 3117. — Demand, acceptance, or retention.
- 3118. — Custom or course of dealing.
- 3119. Consent to assignment of policy.
- 3120. Nonwaiver agreements and reservation of rights.
- 3121. Policy provisions against forfeiture; incontestable clause.
- 3122. — In general.
- 3123. — Validity in general.
- 3124. — Ocean marine insurance; "held covered" clause.
- 3125. — Life, health, and accident insurance.
- 3126. Evidence.
- 3127. — In general.
- 3128. — Presumptions.
- 3129. — Burden of proof.
- 3130. — Admissibility.
- 3131. — Weight and sufficiency.
- 3132. Questions of law or fact.

**XXVII. CLAIMS AND SETTLEMENT
PRACTICES.****(A) IN GENERAL.**

- 3140. In general.

(B) CLAIM PROCEDURES.**1. IN GENERAL.**

- 3141. In general.

2. NOTICE AND PROOF OF LOSS.

- 3142. In general.
- 3143. Necessity.
- 3144. — In general.
- 3145. — Of notice.
- 3146. — Of proof of loss.
- 3147. — Compliance as condition precedent.
- 3148. Persons giving notice or proof.
- 3149. — In general.
- 3150. — Persons injured by insured.
- 3151. Persons receiving notice or proof.
- 3152. Timeliness.
- 3153. — In general.
- 3154. — "Immediately" or "forthwith".

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT
PRACTICES.(Cont'd)**

- 3155. — “As soon as practicable”.
- 3156. — Reasonable time.
- 3157. Excuses for delay or failure.
- 3158. — In general.
- 3159. — Disability or incompetency.
- 3160. — Beliefs or knowledge.
 - (1). In general.
 - (2). As to facts or claim.
 - (3). As to liability.
 - (4). As to policy or coverage.
- 3161. Contents and sufficiency in general.
- 3162. — In general.
- 3163. — Of notice.
- 3164. — Of proof of loss.
- 3165. — Oral or written.
- 3166. Effect of noncompliance with requirements.
- 3167. — In general.
- 3168. — Prejudice to insurer.
- 3169. — Effect on third parties.
- 3170. Forwarding demands and papers; summons and pleadings.
- 3171. Examination of insured or others.
- 3172. Inspection of property.
- 3173. Documents, records and information in general.
- 3174. Medical information.
- 3175. — In general.
- 3176. — Medical reports.
- 3177. — Medical examinations.
- 3178. — Autopsies.
- 3179. Verification.
- 3180. Defects and amendments.
- 3181. Fraud or false swearing.
- 3182. — In general.
- 3183. — Misstatements, omissions or concealment in general.
- 3184. — Knowledge or intent.
- 3185. — Materiality.
- 3186. — Reliance, prejudice or injury.
- 3187. Insurer’s waiver or estoppel.
- 3188. — In general.
- 3189. — Powers of officers and agents.
 - (1). In general.
 - (2). Powers of adjusters.
- 3190. — Express waiver.
- 3191. — Implied waiver or estoppel.

**XXVII. CLAIMS AND SETTLEMENT
PRACTICES.(Cont'd)**

- (1). In general.
- (2). Statements and acts of officers and agents in general.
- (3). Requiring proofs as waiver of notice.
- (4). Failure to furnish blanks or forms.
- (5). Failure to make sufficient demand.
- (6). Recognition of liability.
- (7). Denial of liability.
- (8). Failure to object or to state grounds of objection.
- (9). — In general; delay.
- (10). — Necessity of specific objection.
- (11). — Specifying ground of objection as waiver of other grounds.
- (12). Investigation and adjustment; settlement negotiations.
- (13). Payment of loss.
- 3192. — Nonwaiver agreement or reservation of rights.
- 3193. Evidence.
- 3194. — In general.
- 3195. — Presumptions.
- 3196. — Burden of proof.
- 3197. — Admissibility.
- 3198. — Weight and sufficiency.
 - (1). In general.
 - (2). Estoppel or waiver.
- 3199. Questions of law or fact.
- 3200. — In general.
- 3201. — Estoppel or waiver.

3. COOPERATION.

- 3202. In general.
- 3203. What constitutes cooperation; failure to cooperate.
- 3204. — In general.
- 3205. — Materiality in general.
- 3206. — Providing information in general.
- 3207. — False or inconsistent statements; variant testimony.
- 3208. — Unavailability; absence from trial or other proceedings.
- 3209. — Settlement with third parties; collusion.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)**

- 3210. Effect of failure to cooperate.
- 3211. — In general.
- 3212. — Prejudice to insurer.
- 3213. — Effect on third parties.
- 3214. Insurer's waiver or estoppel.
- 3215. Evidence.
- 3216. — In general.
- 3217. — Presumptions.
- 3218. — Burden of proof.
- 3219. — Admissibility.
- 3220. — Weight and sufficiency.
- 3221. Questions of law or fact.

4. ADJUSTERS.

- 3222. In general.
- 3223. License or registration; discipline.
- 3224. — In general.
- 3225. — Fees.
- 3226. — Violations and penalties.
- 3227. Agreements with principals.
- 3228. Compensation.
- 3229. Service of process.
- 3230. Notice requirements.
- 3231. Claims administration by.
- 3232. — In general.
- 3233. — Payment.
- 3234. — Adjustment or settlement.
- 3235. Premiums.
- 3236. Fiduciary accounts.
- 3237. Books and records.
- 3238. — In general.
- 3239. — Confidentiality.
- 3240. — Examination.
- 3241. Reporting requirements.
- 3242. Liability.
- 3243. Bond.

5. THIRD-PARTY ADMINISTRATORS.

- 3244. In general.
- 3245. Payment.
- 3246. Adjustment or settlement.

6. APPRAISAL.

- 3247. In general.
- 3248. Contracts.
- 3249. — In general.
- 3250. — Validity.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- 3251. — Subjects and scope of appraisal.
- 3252. Compelling appraisal.
- 3253. — In general.
- 3254. — Demand.
- 3255. Waiver or loss of appraisal rights; estoppel.
- 3256. Appraisers.
- 3257. Proceedings on appraisal.
- 3258. — In general.
- 3259. — Evidence.
- 3260. Award.
- 3261. — In general.
- 3262. — Effect; conclusiveness.
- 3263. Review.
- 3264. Failure of appraisal.

7. ARBITRATION.

- 3265. In general.
- 3266. Contractual or consensual basis.
- 3267. Arbitration favored; public policy.
- 3268. Matters subject to arbitration.
- 3269. Compulsory arbitration.
- 3270. Waiver or estoppel.
- 3271. Agreements to arbitrate.
- 3272. — In general.
- 3273. — Requisites and validity.
- 3274. — Modification or termination.
- 3275. — Construction in general.
- 3276. — Liberal or strict construction.
- 3277. — Disputes and matters arbitrable.
- 3278. Submission.
- 3279. Performance or breach of agreement.
- 3280. Enforcement of agreement or right.
- 3281. — In general.
- 3282. — Remedies in general.
- 3283. — Stay of arbitration.
- 3284. — Stay of proceedings pending arbitration.
- 3285. — Demand or notice.
- 3286. — Jurisdiction.
- 3287. — Pleading.
- 3288. — Evidence.
- 3289. — Trial.
- 3290. — Questions of law or fact.
- 3291. — Judgment or order.
- 3292. — Review.
- 3293. Failure to arbitrate.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)**

- 3294. Arbitrators.
- 3295. — In general.
- 3296. — Appointment.
- 3297. — Authority.
- 3298. — Compensation.
- 3299. — Liabilities.
- 3300. Arbitration proceedings.
- 3301. — In general.
- 3302. — Evidence.
- 3303. — Hearing.
- 3304. — Objections and exceptions; waivers.
- 3305. Award.
- 3306. — In general.
- 3307. — Costs.
- 3308. — Validity of award, in general.
- 3309. — Making and formal requisites.
- 3310. — Consistency and reasonableness.
- 3311. — Excessive or inadequate award.
- 3312. — Mistake of law.
- 3313. — Mistake of fact; miscalculation.
- 3314. — Partiality.
- 3315. — Fraud or misconduct.
- 3316. — Subjects and scope of determination, in general.
- 3317. — Uninsured motorist coverage.
- 3318. — No-fault coverage.
- 3319. — Ratification.
- 3320. — Objections or exceptions, and waiver thereof.
- 3321. — Amended or supplemental awards.
- 3322. — Reconsideration.
- 3323. — Confirmation.
- 3324. — Effect of award.
 - (1). In general.
 - (2). Persons affected.
 - (3). Conclusiveness.
- 3325. Non-judicial review; appeals board.
- 3326. Judicial review.
- 3327. — In general.
- 3328. — Decisions reviewable.
- 3329. — Right of review; persons entitled to review.
- 3330. — Grounds.
 - (1). In general.
 - (2). Limited to statutory grounds.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- (3). Presentation and reservation of grounds.
- 3331. — Proceedings for review.
 - (1). In general.
 - (2). Hearing and determination in general.
 - (3). Scope of inquiry.
 - (4). Trial de novo.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions.
 - (8). — Burden of proof.
 - (9). — Admissibility.
 - (10). — Weight and sufficiency.
- 3332. Enforcement of award.

8. MEDIATION.

- 3333. In general.

(C) SETTLEMENT DUTIES; BAD FAITH.

Deceptive practices, see also ANTITRUST AND TRADE REGULATION.

- 3334. In general.
- 3335. — In general.
- 3336. — Reasonableness of insurer's conduct in general.
- 3337. — Absence of coverage; coverage disputes in general.
- 3338. — Negligence and bad faith distinguished.
- 3339. — Insured's conduct as defense.
- 3340. — Complaint procedures.
- 3341. Prerequisites for claim of breach or bad faith.
- 3342. — In general.
- 3343. — Notice, proof, and demand by insured.
- 3344. — Insurer's refusal as condition for recovery.
- 3346. Settlement by liability insurer.
- 3347. — In general.
- 3348. — Insurer's right to settle.
- 3349. — Insurer's settlement duties in general.
- 3350. — Duty to settle within or pay policy limits.
- 3351. — Payment of fewer than all claims.
- 3352. — Claim by excess insurer.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)**

- 3353. — Investigations and inspections.
- 3354. — Fraud or misrepresentation.
- 3355. — Communications and explanations.
- 3356. — Duty to, and effect on, non-parties in general.
- 3357. — Persons entitled to recover; companies and persons liable.
- 3358. Settlement by first-party insurer.
- 3359. — In general.
- 3360. — Duty to settle or pay.
- 3361. — Investigations and inspections.
- 3362. — Fraud or misrepresentation.
- 3363. — Communications and explanations.
- 3364. — Duty to, and effect on, non-parties in general.
- 3365. — Persons entitled to recover; companies and persons liable.
- 3366. Settlement by insured; insured's release of tort-feasor.
- 3367. — In general.
- 3368. — Bad faith.
- 3369. — Impairment of insurer's subrogation rights.
 - (1). In general.
 - (2). As barring insured's recovery under policy.
- 3370. — Notice to or consent of liability insurer.
- 3371. — Liability insurer's failure to defend or indemnify.
- 3372. — Duty to, and effect on, non-parties.
- 3373. Amount and items recoverable.
Emotional distress damages, see DAMAGES ¶57.46.
- 3374. — In general.
- 3375. — Attorney fees.
- 3376. — Punitive or multiple damages.
- 3378. Actions.
- 3379. — In general.
- 3380. — Time to sue and limitations.
- 3381. — Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- (5). Weight and sufficiency.
- 3382. — Questions of law or fact.
- (D) REQUISITES AND VALIDITY OF SETTLEMENT OR RELEASE.**
- 3383. In general.
- 3384. Consideration.
- 3386. Ratification.
- 3387. Public policy considerations.
- 3388. Fraud or mistake.
- 3389. Actions.
- (E) CONSTRUCTION AND EFFECT OF SETTLEMENT OR RELEASE.**
- 3390. In general.
- 3391. What constitutes settlement or release.
- 3392. Allocation of settlement amounts.
- (F) PAYMENT OF PROCEEDS.**
- 3393. In general.
- 3394. Place of payment.
- 3395. Time of payment.
- 3396. Interest.
Prejudgment interest, see INTEREST ¶39(2.35).
- 3397. Mode and sufficiency of payment.
- 3398. — In general.
- 3399. — Foreign or domestic currency.
- 3400. — Payment by check or draft.
 - (1). In general.
 - (2). Joint check or draft.
- 3401. — Lump sum or installments.
- 3402. — Settlement options and supplementary contracts.
- 3403. — Loan receipts and similar transactions.
- 3404. Effect of payment.
- 3405. — In general.
- 3406. — Payment as discharge of insurer.
- 3407. Evidence.
- 3408. Questions of law or fact.
- XXVIII. MISCELLANEOUS DUTIES AND LIABILITIES.**
- Deceptive practices, see also ANTITRUST AND TRADE REGULATION.*
- 3415. In general.
- 3416. Of insurers.
- 3417. — In general.
- 3418. — Negligence in general.

217. INSURANCE**XXVIII. MISCELLANEOUS DUTIES
AND LIABILITIES.(Cont'd)**

- 3419. — Bad faith in general.
- 3420. — Investigations and inspections.
- 3421. — Policy and coverage recommendations.
- 3422. — Failure to issue policy; delay.
- 3423. — Cancellation or rescission of policy; failure to renew.
- 3424. — Fraud or misrepresentation; concealment.
- 3425. Of insureds.
- 3426. Actions in general; evidence.
- 3427. Questions of law or fact.

XXIX. PERSONS ENTITLED TO PROCEEDS.**(A) IN GENERAL.**

- 3433. In general.
- 3434. Status of claimant in general.
- 3435. — In general.
- 3436. — Third-party beneficiary.
- 3437. Ownership of policy.
- 3438. Beneficiaries in general.
- 3439. Creditors in general.
- 3440. Wrongful conduct of insured or beneficiary in general.
- 3441. Assignment of claim or right to sue.
Assignment of bad faith claim or other extra-contractual claim, see ASSIGNMENTS; assignment of policies, see INSURANCE XIII(S).

(B) PROPERTY INSURANCE.

- 3442. In general.
- 3443. Bailments, leases, and trusts.
- 3444. Sales and transfers.
- 3445. Divided or multiple ownership; husband and wife.
- 3446. Creditors and holders of liens in general.
- 3447. Mortgagees and deed of trust beneficiaries in general.
- 3448. Policy provisions affecting rights.
- 3449. — In general.
- 3450. — Open mortgage or loss payable clause.
- 3451. — Standard or union mortgage clause.
- 3452. Other agreements affecting rights.
- 3453. — In general.
- 3454. — Mortgagor's covenant to insure.

(C) LIABILITY INSURANCE.

- 3455. In general.
- 3456. Rights of injured person against insurer.
- 3457. — In general.
- 3458. — As affected by insured's rights.
 - (1). In general.
 - (2). Defenses in general.
 - (3). Personal defenses.
- 3459. — Multiple claims; priorities and settlements.

**(D) UNINSURED OR UNDERINSURED
MOTORIST COVERAGE.**

- 3460. In general.

(E) NO-FAULT INSURANCE.

- 3461. In general.

(F) LIFE, HEALTH AND ACCIDENT INSURANCE.

- 3462. In general.
- 3463. Named beneficiaries, in general.
- 3464. Who may be beneficiary.
- 3465. Mode and sufficiency of designation.
- 3466. Group insurance.
- 3467. Effect of omitted or ineffective designation of beneficiary in general.
- 3468. Relative or person equitably entitled; facility of payment clause.
- 3469. Beneficiary's interest as vested or expectant.
- 3470. — In general.
- 3471. — Time of vesting.
- 3472. Change of beneficiary, in general.
- 3473. — In general.
- 3474. — Right to change; consent.
- 3475. — Mode and sufficiency.
 - (1). In general.
 - (2). Compliance with policy, in general.
 - (3). Substantial or strict compliance.
 - (4). Doing everything within power to effectuate change.
 - (5). Request or notice and presentation of policy or certificate.
 - (6). Endorsement on policy or certificate.
 - (7). Wills.
 - (8). Waiver and estoppel as to defects.
- 3476. — Validity of assent to change.

217. INSURANCE**XXIX. PERSONS ENTITLED TO PROCEEDS.(Cont'd)**

- (1). In general.
- (2). Incapacity, misrepresentations, and undue influence.
- 3477. — Effect of change; revocation and successive changes.
- 3478. Spouses, parents and children.
- 3479. — In general.
- 3480. — Children born to unmarried parents; adoption; stepchildren.
- 3481. — Divorce or separation; agreements and settlements.
See also, DIVORCE \S 252.3(4).
- (1). In general.
- (2). Effect on prior designation of beneficiary.
- (3). Effect on right to change beneficiary.
- 3482. Surrender of policy and issuance of new policy.
- 3483. Disqualification of beneficiary, in general.
- 3484. Death of insured caused by beneficiary; slayer's rule.
- 3485. Death of beneficiary.
- 3486. Policy procured with money wrongfully obtained.
- 3487. Rights of creditors.
- 3488. — In general.
- 3489. — Cash value and dividends.
- 3490. Persons paying premiums; policy loans.

(G) EVIDENCE; QUESTIONS OF LAW OR FACT.

- 3491. In general.
- 3492. Presumptions.
- 3493. Burden of proof.
- 3494. Admissibility.
- 3495. Weight and sufficiency.
- 3496. — In general.
- 3497. — Change of beneficiary.
- 3498. Questions of law or fact.

XXX. RECOVERY OF PAYMENTS BY INSURER.

- 3500. In general.
- 3501. Reimbursement of payments.
- 3502. — In general.
- 3503. — Reimbursement from insured.
- (1). In general.

XXX. RECOVERY OF PAYMENTS BY INSURER.(Cont'd)

- (2). Grounds and prerequisites.
- (3). — In general.
- (4). — Impairment of subrogation rights.
- 3504. — Reimbursement from third parties, in general.
- 3505. — Reimbursement from other insurers, in general.
- 3506. — Liability insurance.
- (1). In general.
- (2). Defense costs.
- 3507. — Uninsured or underinsured motorist or no-fault insurance.
- (1). In general.
- (2). Liens.
- 3508. — Actions.
- 3509. Reimbursement and subrogation distinguished.
- 3510. Subrogation against insured; “anti-subrogation rule”.
- 3511. Subrogation against third parties; right to proceeds of action or settlement.
- 3512. — In general.
- 3513. — Theories of subrogation; definitions and distinctions.
- (1). In general.
- (2). Subrogation by operation of law, in general.
- (3). Equitable subrogation.
- (4). Conventional or contractual subrogation.
- 3514. — Payment to insured or injured person.
- (1). In general.
- (2). Adequate compensation of insured; “made whole” doctrine.
- (3). Voluntary payment.
- 3515. — Property and title insurance.
- (1). In general.
- (2). Mortgagee's or lienholder's rights, subrogation to.
- 3516. — Ocean marine insurance.
- 3517. — Liability, fidelity and guaranty insurance.
- 3518. — Life insurance.
- 3519. — Health and accident insurance.
- (1). In general.
- (2). Medical insurance.

217. INSURANCE**XXX. RECOVERY OF PAYMENTS
BY INSURER.(Cont'd)**

- 3520. — Uninsured or underinsured motorist coverage.
- 3521. — No-fault insurance.
- 3522. — Waiver or loss of subrogation rights.
- 3523. — Subrogation as derivative right.
 - (1). In general; rights or “shoes” of insured.
 - (2). Defenses against insured affecting insurer.
 - (3). — In general.
 - (4). — Release or settlement with insured.
- 3524. — Loan receipts and similar transactions.
- 3525. — Assignment of rights of insured.
- 3526. — Actions involving subrogation.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Laches.
 - (4). Persons entitled to sue, and parties.
 - (5). — In general.
 - (6). — Real party in interest.
 - (7). — Partial payment and subrogation.
 - (8). — Effect of agreement, assignment, or policy provisions.
 - (9). Pleading.
 - (10). Evidence.
 - (11). Questions of law or fact.
- 3527. — Amount of recovery and relief granted, in general.
- 3528. — Attorney fees and costs.
- 3529. Contribution among insurers.
- 3530. — In general.
- 3531. — Primary and excess insurers.
- 3532. — Actions.

XXXI. CIVIL PRACTICE AND PROCEDURE.

- 3540. In general.
- 3541. Nature and form of remedy.
- 3542. Direct action by injured person, in general.
- 3543. Grounds of action.
- 3544. Conditions precedent.
- 3545. — In general.
- 3546. — Notice and proof of loss.

**XXXI. CIVIL PRACTICE AND
PROCEDURE.(Cont'd)**

- 3547. — Submission to appraisal or arbitration.
- 3548. — Uninsured or underinsured motorist coverage.
- 3549. — Liability or indemnity insurance.
 - (1). In general.
 - (2). Judgment or settlement agreement.
 - (3). — In general.
 - (4). — “No action” clause.
 - (5). — Effect of appeal.
 - (6). Issuance or return of execution; unsatisfied judgment.
 - (7). Notice.
- 3550. Demand.
- 3551. Bond or other security.
- 3552. — In general.
- 3553. — Foreign companies.
- 3554. Defenses in general.
- 3555. Conclusiveness and effect of prior adjudication.
- 3556. — In general.
- 3557. — Particular matters concluded.
- 3558. Jurisdiction.

Personal jurisdiction over nonresidents, or “long-arm” jurisdiction, see COURTS ¶13.1, FEDERAL COURTS X.
- 3559. Venue.
- 3560. Statutes of limitations.

See also, LIMITATION OF ACTIONS.
- 3561. Contractual time limitations.
- 3562. — In general.
- 3563. — Time before action can be brought.
- 3564. — Time within which action must be brought.
 - (1). In general.
 - (2). Validity of provisions.
 - (3). — In general.
 - (4). — Period shorter than statute.
 - (5). Computation.
 - (6). — In general.
 - (7). — Accrual.
 - (8). — Tolling.
 - (9). Circumstances excusing compliance.
 - (10). Government entities.
- 3565. — Estoppel and waiver.
 - (1). In general.

217. INSURANCE**XXXI. CIVIL PRACTICE AND
PROCEDURE.**(Cont'd)

- (2). Powers of officers or agents.
- (3). Particular conduct.
- (4). Denial of liability.
- 3566. Laches.
- 3567. Parties.
- 3568. Process.
- 3569. — In general.
- 3570. — Against foreign companies.
 - (1). In general.
 - (2). Service on commissioner or other official.
- 3571. Pleading.
- 3572. Evidence.
- 3573. — In general.
- 3574. — Presumptions.
- 3575. — Burden of proof.
- 3576. — Admissibility.
- 3577. — Weight and sufficiency.
- 3578. Questions of law or fact.
- 3579. Instructions.
- 3580. Verdict and findings.
- 3582. Judgment.
- 3584. Costs and attorney fees.
- 3585. — In general.
- 3586. — Appeals.

XXXII. REINSURANCE.

- 3590. In general.
- 3591. Nature of reinsurance.
- 3592. — In general.
- 3593. — Definitions.
- 3594. Power and right to reinsure risk.
- 3595. — In general.
- 3596. — Mandatory reinsurance.
- 3597. Intermediaries and agents.
- 3598. — In general.
- 3599. — Licensing.
- 3600. — Authority.
- 3601. — Records and reports.
- 3602. — Contracts.
 - (1). In general.
 - (2). Breaches.
- 3603. — Miscellaneous duties and liabilities.
- 3604. Contract and policy.
- 3605. — In general.
- 3606. — Formation.

XXXII. REINSURANCE.(Cont'd)

- 3607. — Construction in general.
- 3608. — Relations between parties; implied terms.
 - (1). In general.
 - (2). Good faith.
- 3609. — Modification and reformation.
- 3610. — Cancellation, surrender or rescission.
- 3611. — Transfers.
 - (1). In general.
 - (2). Assumption and bulk insurance transfers.
- 3612. Premiums.
- 3613. Coverage.
- 3614. — In general.
- 3615. — Following fortunes, form, and settlement.
- 3616. — Amount of recovery.
- 3617. Avoidance and forfeiture.
- 3618. — In general.
- 3619. — Misrepresentation.
- 3620. — Concealment.
- 3621. Estoppel and waiver of defenses.
- 3622. Claims and settlement practices.
- 3623. — In general.
- 3624. — Claim procedures.
- 3625. — Settlements by reinsurer.
- 3626. — Alternative dispute resolution.
- 3627. Miscellaneous duties and liabilities.
- 3628. Rights of original insured or others.
- 3629. — In general.
- 3630. — As third-party beneficiary.
- 3631. Effect of reinsured's insolvency.
- 3632. Actions.
- 3633. — In general.
- 3634. — Evidence.
- 3635. — Questions of law or fact.

XXXIII. OFFENSES AND PROSECUTIONS.

- 3640. In general.
- 3642. Insurance companies and related entities.
- 3643. Surplus lines insurers.
- 3644. Financial impairment.
- 3645. Privacy.
- 3646. Agents and agency.
- 3647. Contracts and policies.
- 3648. Premiums.

219. INTEREST

XXXIII. OFFENSES AND PROSECUTIONS.(Cont'd)

- 3649. Property insurance.
- 3650. Liability insurance.
- 3651. Life insurance.
- 3652. Health and accident insurance.
- 3653. Title insurance.
- 3654. Automobile insurance.
- 3655. Sales, marketing and advertising practices.
- 3656. Actions and proceedings.

218. INSURRECTION AND SEDITION

SUBJECTS INCLUDED

- Criminal anarchy, sabotage, syndicalism and other similar seditious acts of an individual or of individuals having a political end in view
- Rising of a number of persons against civil authority for the purpose of preventing by force the execution of the law, or of forcibly overthrowing the government, and raising or attempting to raise seditious commotions for such purposes, although without open violence
- Nature and elements of the crimes of insurrection, sedition, revolt, rebellion, etc.
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Status of insurgents, and protection and enforcement of rights in insurrectionary districts
- Proceedings for suppression of insurrection by civil authority
- Prosecution and punishment of acts of insurrection, revolt, or rebellion, not constituting treason, and of seditious acts and practices, as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Conspiracies, seditious and treasonable, see CONSPIRACY
- Military power, suppression of insurrection by, see WAR AND NATIONAL EMERGENCY

Mutiny against military or naval authority or authority of commander of merchant vessel, see ARMED SERVICES, MILITARY JUSTICE, SEAMEN

Rioting in general, see RIOT

States in insurrection or rebellion, and seceded states, see STATES

Subversive groups, protection against as defense measure, and other measures and acts in exercise of war powers, see WAR AND NATIONAL EMERGENCY

1. Nature and existence in general.
2. Offenses and prosecutions.
3. Civil status of insurgents and persons within insurrectionary districts.
4. Protection and enforcement of rights within insurrectionary districts.
5. Suppression of insurrection by civil authority.

219. INTEREST

SUBJECTS INCLUDED

- Compensation for use, forbearance, or detention of money
- Rights and liabilities in respect thereof in general
- Rate fixed by parties or allowed by law
- Mode of computation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Damages, interest as element of, see DAMAGES
- Particular classes of liabilities, interest on, see EMINENT DOMAIN and other specific topics
- Persons acting in fiduciary or other special relations, rights and liabilities of, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, PRINCIPAL AND AGENT, TRUSTS, and other specific topics
- Unlawful rate, see USURY

219. INTEREST

- I. RIGHTS AND LIABILITIES IN GENERAL, ¶1–26.
- II. RATE, ¶27–38.
- III. TIME AND COMPUTATION, ¶39–60.
- IV. RECOVERY, ¶61–68.

I. RIGHTS AND LIABILITIES IN GENERAL.

- 1. Nature and grounds in general.
- 2. What law governs.
- 3. Constitutional and statutory provisions.
- 4. Contracts for interest.
- 5. — In general.
- 6. — Express contracts.
- 7. — Implied contracts.
- 8. Compensation for use of money.
- 9. — In general.
- 10. — Loans and advances.
- 11. — Money received for use of another.
- 12. — Money wrongfully obtained, held, or used.
- 13. Default in payment in general.
- 14. Unreasonable or vexatious delay in payment.
- 15. Written instruments.
- 16. Installments of principal.
- 17. Coupons and installments of interest.
- 18. Accounts.
 - (1). In general.
 - (2). Open or unliquidated accounts.
 - (3). Settled or stated accounts.
- 19. Demands not liquidated.
 - (1). In general.
 - (2). Amount readily ascertainable by computation.
 - (3). Principal in dispute.
- 20. Funds in litigation or in custody of the law.
- 21. Verdicts, findings, and awards.
- 22. Judgments.
 - (1). In general.
 - (2). Compound interest.
 - (3). Judgments of federal courts.
 - (4). Foreign judgments.
 - (5). Judgments silent as to interest.
 - (6). Judgments sounding in damages.
 - (7). Judgments against persons in fiduciary capacities.
 - (8). Judgments on fines and bonds.
 - (9). Judgments for fees and costs.
- 23. Time when interest accrues.

I. RIGHTS AND LIABILITIES IN GENERAL.(Cont'd)

- 24. Interest in advance.
- 25. Apportionment.
- 26. Waiver.

II. RATE.

- 27. Power to regulate.
- 28. What law governs.
- 29. Constitutional and statutory provisions.
- 30. Changes in statutory rate.
 - (1). In general.
 - (2). Effect on contracts fixing rate.
 - (3). Effect on judgments.
- 31. Computation of rate in general.
- 32. Stipulations as to rate.
- 32.1. — In general.
- 33. — Power to contract.
- 34. — Requisites and validity.
- 35. — Statement as to rate in contract.
- 36. — Construction and operation.
 - (1). In general.
 - (2). Effect of subsequent contract as to rate.
- 37. After maturity of debt.
 - (1). In general.
 - (2). Contract as to rate after maturity.
- 38. On judgments.
 - (1). In general.
 - (2). Judgments founded on contract fixing rate.

III. TIME AND COMPUTATION.

- 39. Time from which interest runs in general.
 - (1). In general.
 - (2). Judgments and decrees in general.
 - (2.5). Prejudgment interest in general.
 - (2.6). — In general.
 - (2.10). — Discretion in general.
 - (2.15). — Liquidated or unliquidated claims in general.
 - (2.20). — Particular cases and issues.
 - (2.25). — Admiralty and maritime matters.
 - (2.30). — Contract and sales matters.
 - (2.35). — Insurance matters.

220. INTERNAL REVENUE**III. TIME AND COMPUTATION.**(Cont'd)

- (2.40). — Labor relations and employment.
- (2.45). — Civil rights and discrimination.
- (2.50). — Torts; wrongful death.
- (2.55). — Punitive damages; penalties.
- (3). Interest from date of judgment or decree.
- (4). Money wrongfully procured or expended.
- (5). Accounts.
- (6). Loans and advances.
- 40. Statutory provisions as to time.
- 41. Stipulations as to time.
- 41.1. — In general.
- 42. — Payment of debt with interest in general.
- 43. — Particular provisions.
- 44. Creation or accrual of indebtedness.
- 45. Maturity of principal.
- 46. Demand for payment of principal.
 - (1). In general.
 - (2). Form and sufficiency of demand.
 - (3). Necessity.
- 47. Commencement of action.
 - (1). In general.
 - (2). Demands not liquidated.
- 48. Suspension.
- 49. — In general.
- 50. — Tender.
- 51. — Pendency of litigation.
- 52. — Injunction.
- 53. — Appeal or other proceedings for review.
- 54. — Stay of proceedings.
- 55. — War.
- 56. Mode of computation in general.
- 57. Statutory provisions as to computation.
- 58. Rests in computation.
- 59. Application of partial payments.
 - (1). In general.
 - (2). Interest on partial payments.
- 60. Compound interest.

IV. RECOVERY.

- 61. Interest as incident to principal.
- 62. Interest as distinct cause of action.

IV. RECOVERY.(Cont'd)

- 63. Time to sue and limitations.
- 64. Pleading.
- 64.1. — In general.
- 65. — Allegations as to interest.
- 66. — Demand for interest.
- 67. Evidence.
- 68. Questions for jury.

220. INTERNAL REVENUE**SUBJECTS INCLUDED**

Taxes imposed by act of Congress other than duties on imports or exports
 Power to impose such taxes and constitutional and statutory provisions relating thereto
 Persons, occupations, transactions, property and incomes subject to tax
 Rate and amount of tax
 Levy, assessment, lien, collection and payment of taxes
 Remedies for erroneous taxation
 Forfeiture, penalties, and other punishments for violations of internal revenue laws

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- 4086. Source of income.
- 4087. Evidence.

2. INCOME FROM SOURCES WITHOUT THE UNITED STATES.

- 4095. In general.
- 4096. Constitutional and statutory provisions.
- 4097. Rules and regulations.
- 4098. Foreign tax credit.
- 4099. — In general.
- 4100. — Credits to corporations.
- 4101. — Payments by subsidiaries.
- 4102. — Taxes for which credit may be taken.
- 4103. — Time when allowable.
- 4104. — Carryback and carryover.
- 4105. — Amount of credit; limitation.
- 4106. International boycotts.
- 4107. Earned income of citizens or residents of the United States.
- 4108. — In general.
- 4109. — Earned income.
- 4110. — Residence or presence in foreign country.
- 4111. — Residence in camp or hardship area.
- 4112. — Source of income in general.
- 4113. — Payment by United States or agency thereof.
- 4114. — Partnership income.
- 4115. — Allocation between domestic and foreign sources.
- 4116. — Expenses of living abroad.
- 4117. Western Hemisphere Trade Corporations.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 4118. Domestic International Sales Corporations; Foreign Sales Corporations.
- 4119. Controlled foreign corporations.
- 4120. Foreign personal holding companies.
- 4121. Income from sources within possessions, Guam, Puerto Rico or the Virgin Islands.
- 4122. Evidence.

VI. EXCESS PROFITS AND WAR PROFITS TAXES.

- 4130. In general.
- 4131. Constitutional and statutory provisions.
- 4132. Rules and regulations.
- 4133. Invested capital.
- 4134. Deductions.
- 4135. Persons liable.
- 4136. Evidence.

VII. ESTATE TAXES.**(A) IN GENERAL.**

- 4140. In general.
- 4141. Nature of tax.
- 4142. Time when liability accrues.

(B) ESTATES OF CITIZENS OR RESIDENTS.

Excludes persons liable for taxes found to be due and mode of payment, see §4810 et seq., particularly §4818-4821, 4824 and 4830.

- 4145. In general.
- 4146. Constitutional and statutory provisions.
- 4147. Rules and regulations.
- 4148. Citizens and residents.
- 4149. Gross estate, inclusions and exclusions.
- 4149.10. — In general.
- 4151. — Decedent's interest at time of death in general.
- 4152. — Dower or curtesy and statutory substitutes.
- 4153. — Joint or community interests.
 - (1). In general.
 - (2). Interests of spouses.
- 4154. — Reciprocal dispositions.
- 4155. — Life insurance.
- 4157. — Annuities.
- 4157.10. — Powers of appointment.
 - (1). In general.
 - (2). Ability to exercise; incompetency of holder.

VII. ESTATE TAXES.(Cont'd)

- (3). Limits on exercise; ascertainable standard.
- (4). Relinquishment or lapse of power.
- 4159. — Property transferred during decedent's lifetime.
 - (1). In general.
 - (2). Gifts in contemplation of or within three years of death.
 - (3). Retained interest, transfers with.
 - (4). Transfers intended to take effect at death.
 - (5). Reversionary interests.
 - (6). Revocable transfers.
 - (7). Bona fide sales for adequate consideration.
- 4168. Deductions.
- 4168.10. — In general.
- 4169. — Marital deduction.
 - (1). In general.
 - (2). Passage of interest to spouse.
 - (3). Transfers other than by will; election against will; will contests and settlements thereof.
 - (4). Life estates and terminable interests.
 - (5). Value of interest; effect of tax payments.
- 4171. — Taxes.
- 4172. — Transfers for public, charitable or religious uses.
 - (1). In general.
 - (2). Recipient and purpose of gift.
 - (3). Conditional or contingent transfers; certainty.
 - (4). Remainder interests in general; split interests.
 - (5). Power to invade corpus or divert gift; ascertainable standard or value.
 - (6). Amount; taxes payable from bequest.
 - (7). Reformation or modification.
- 4177. — Funeral and administrative expenses.
- 4177.10. — Claims against estate; indebtedness.
 - (1). In general.
 - (2). Enforceability of obligation.
 - (3). Consideration.

220. INTERNAL REVENUE**VII. ESTATE TAXES.**(Cont'd)

- (4). Intrafamily transactions.
- (5). Claims by or on behalf of former spouse.
- (6). Gift taxes.
- 4177.20. Disclaimers.
- 4182. Credits.
- 4182.10. — In general.
- 4182.20. — Taxes.
 - (1). In general.
 - (2). Federal estate taxes on prior transfers.
- 4182.30. — Unified credit.
- 4183. Valuation.

Excludes value of reversionary interests, see §4159(5) and value of interest passing to spouse for purpose of marital deduction, see §4169(5).
- 4183.10. — In general.
- 4184. — Corporate securities.
- 4184.10. — Farm and other qualified use property.
- 4184.20. — Time of valuation; alternate valuation.
- 4185. Evidence.

Excludes presumption that gift is in contemplation of death, see §4159(2).

(C) ESTATES OF NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.

- 4190. In general.
- 4191. Constitutional and statutory provisions; rules and regulations.
- 4192. Property within the United States.
- 4193. Property without the United States.
- 4194. Deductions.
- 4195. Evidence.

VIII. GIFT TAXES.

- 4200. In general.
- 4201. Constitutional and statutory provisions.
- 4202. Rules and regulations.
- 4203.10. Taxable transfers or gifts.
- 4203.20. — In general.
- 4203.30. — Transfers for consideration or in ordinary course of business.
- 4203.40. — Loans and interest.
- 4203.50. — Retained interests.
- 4204. — Transfers to trusts.
- 4205. — Exercise or release of powers.
- 4205.10. — Disclaimers.
- 4206. Exclusions.

VIII. GIFT TAXES.(Cont'd)

- 4206.10. — In general; annual exclusion.
- 4206.20. — Present or future interest.
- 4206.30. — Transfers for benefit of minors.
- 4207. Deductions.
- 4207.10. Unified credit.
- 4208. Value of gifts.
- 4209. Evidence.

IX. GENERATION SKIPPING TRANSFER TAXES.

- 4220. In general.
- 4221. Constitutional and statutory provisions.
- 4222. Rules and regulations.
- 4223. Nature of tax.
- 4224. Transfers taxable.
- 4225. Deductions.
- 4226. Credits.
- 4227. Value of property.
- 4228. Evidence.

X. OCCUPATION OR BUSINESS TAXES.

- 4240. In general.
- 4241. Constitutional and statutory provisions; rules and regulations.
- 4242. Nature of tax.
- 4243. Business or occupation in general.
- 4244. Distillers, liquor dealers, brewers, rectifiers and still manufacturers.
- 4245. Insurance.
- 4246. Wagering and slot machines.
- 4247. Revenue stamps.
- 4248. Evidence.

XI. CORPORATION EXCISE TAXES.

- 4260. In general.
- 4261. Constitutional and statutory provisions; rules and regulations.
- 4262. Nature of tax.
- 4263. Corporations subject to tax.
- 4264. Evidence.

XII. EXCISE TAXES ON FOUNDATIONS AND TRUSTS.

- 4270. In general.
- 4271. Constitutional and statutory provisions.
- 4272. Rules and regulations.
- 4273. Nature of tax.

220. INTERNAL REVENUE**XII. EXCISE TAXES ON FOUNDATIONS
AND TRUSTS.(Cont'd)**

- 4274. Organizations subject to tax.
- 4275. Investment income.
- 4276. Self-dealing.
- 4277. Undistributed income.
- 4278. Excess business holdings.
- 4279. Investments jeopardizing charitable purposes.
- 4280. Taxable expenditures.
- 4281. Black lung benefit trusts.
- 4282. Real estate investment trusts.
- 4283. Persons liable.
- 4284. Foreign organizations.
- 4285. Evidence.

**XIII. EXCISE TAXES ON PENSION, PROFIT-
SHARING AND STOCK BONUS PLANS.**

- 4290. In general.
- 4291. Constitutional and statutory provisions.
- 4292. Rules and regulations.
- 4293. Nature of tax.
- 4294. Funding deficiencies.
- 4295. Excess contributions.
- 4296. Improper accumulations.
- 4297. Prohibited transactions.
- 4298. Evidence.

**XIV. TAXES ON SPECIFIC ARTICLES
AND TRANSACTIONS.****(A) IN GENERAL.**

- 4305. In general.
- 4306. Constitutional and statutory provisions.
- 4307. Rules and regulations.
- 4308. Admissions; Cabarets.
- 4309. Acquisition of foreign stock or debt obligations; interest equalization.
- 4310. Dues.
- 4311. Firearms and destructive devices.
- 4312. Fuels.
- 4313. Highway usage.
- 4314. Liquors.
- 4314.1. — In general.
- 4315. — Distilled spirits.
- 4316. — Fermented liquors.
- 4317. — Wines.
- 4318. Narcotics.
- 4319. Retail sales.

**XIV. TAXES ON SPECIFIC ARTICLES
AND TRANSACTIONS.(Cont'd)**

- 4320. Wagers and lotteries.
- 4321. Evidence.

**(B) MANUFACTURERS' AND PRODUCERS'
EXCISE TAXES.**

- 4325. In general.
- 4326. Constitutional and statutory provisions.
- 4327. Rules and regulations.
- 4328. Nature of tax.
- 4329. Subjects of taxation in general.
- 4330. Automobiles and parts.
- 4331. Coal.
- 4332. Firearms and destructive devices.
- 4333. Jewelry.
- 4334. Petroleum products.
- 4335. Sporting goods.
- 4336. Tires and inner tubes.
- 4337. Toilet preparations.
- 4338. Windfall profits from oil.
- 4339. Evidence.

**(C) TRANSPORTATION AND COMMUNICATION
TAXES.**

- 4345. In general.
- 4346. Constitutional and statutory provisions; rules and regulations.
- 4347. Air transportation.
- 4348. Pipelines.
- 4349. Telecommunications.
- 4350. Evidence.

(D) EMPLOYMENT TAXES.

- 4351. In general.
- 4352. Constitutional and statutory provisions.
- 4353. Rules and regulations.
- 4354. Nature of tax.
- 4355. Construction in general.
- 4356. Employer-employee relationship.
- 4356.1. — In general.
- 4357. — Tests of relationship.
- 4358. — Existence or nonexistence of relationship in general.
- 4359. Employees, who are.
- 4360. Employee representatives, who are.
- 4361. Employers, who are.
- 4361.1. — In general.
- 4362. — Carriers by railroad and auxiliaries, who are.

220. INTERNAL REVENUE**XIV. TAXES ON SPECIFIC ARTICLES
AND TRANSACTIONS.(Cont'd)**

- 4363. Independent contractors, who are.
- 4364. Employments included in general.
- 4365. Employments excepted.
- 4365.1. — In general.
- 4366. — Agricultural.
- 4367. — Casual.
- 4368. — Charitable.
- 4369. — Educational.
- 4370. — Governmental.
- 4371. — Religious.
- 4372. — Scientific.
- 4373. — Employment on vessels.
- 4374. Taxes in general.
- 4375. On employee representatives.
- 4376. On employers in general.
- 4377. On employees in general.
- 4378. On carriers by railroad and their auxiliaries.
- 4378.1. — In general.
- 4379. — On employees of.
- 4380. Credits.
- 4381. Self-employment.
- 4382. Evidence.

XV. DOCUMENTARY STAMP TAXES.

- 4390. In general.
- 4391. Constitutional and statutory provisions; rules and regulations.
- 4392. Instruments subject to tax in general.
- 4393. Bills of lading and shipping receipts.
- 4394. Bonds.
- 4395. Capital stock.
- 4396. Certificates.
- 4397. Charter parties.
- 4398. Checks, drafts, and orders for payment of money.
- 4399. Corporate securities.
- 4400. Deeds and instruments selling, granting, transferring or assigning realty or interest therein.
- 4401. Insurance policies.
- 4402. Powers of attorney.
- 4403. Sales and transfers of corporate securities.
- 4404. Sales and transfers of corporate shares.
- 4405. Warehouse receipts.
- 4406. Use of unstamped instrument.

XV. DOCUMENTARY STAMP TAXES.(Cont'd)

- 4406.1. — In general.
- 4407. — Admissibility to record.
- 4408. — Admissibility in evidence.
- 4409. Evidence.

XVI. BONDS UNDER REVENUE LAWS.**(A) IN GENERAL.**

- 4415. In general.
- 4416. Nature, requisites, and validity.
- 4417. Construction and effect.
- 4418. Discharge and release.

(B) ACTIONS ON BONDS.

- 4420. In general.
- 4421. Right to sue and parties.
- 4422. Defenses.
- 4423. Time to sue, limitations, and laches.
- 4424. Pleading.
- 4425. Evidence.
- 4426. Trial.
- 4427. Judgment.

**XVII. BONDED WAREHOUSES
AND GOODS IN BOND.**

- 4430. In general.
- 4431. Distillery warehouses.
- 4431.1. — In general.
- 4432. — Withdrawal from warehouse.
- 4433. — Warehousemen's bonds, and liability thereon.
- 4434. — Transportation in bond.

**XVIII. ADMINISTRATION OF
TAXES GENERALLY.****(A) IN GENERAL.**

- 4440. In general.
- 4441. Prevention and detection of violations of revenue laws in general.
- 4442. Informers, tax ferrets and rewards.
- 4443. Investigations, audits and conferences.
- 4444. Regulation of persons representing taxpayers.
- 4444.1. — In general.
- 4445. — Disbarment or other discipline.
- 4446. — Tax return preparers.
- 4447. — Proceedings.

220. INTERNAL REVENUE**(B) REVENUE OFFICERS AND AGENTS.**

- 4450. In general.
- 4451. Appointment.
- 4452. Promotion, transfer and assignment.
- 4453. Compensation.
- 4454. Resignation and removal, suspension or other discipline.
- 4454.1. — In general.
- 4455. — Proceedings.
- 4456. Wrongful discharge or discipline.
- 4457. Liability for misconduct.
Liability for constitutional violations, see UNITED STATES V(D)2.
- 4458. Particular officers.
- 4459. Commissioner of internal revenue.
- 4460. Collectors.
- 4461. Deputy collectors.
- 4462. Agents.
- 4462.1. — In general.
- 4463. — Resignation and removal, suspension or other discipline.
- 4464. — Liability for misconduct.
Liability for constitutional violations, see UNITED STATES V(D)2.

XIX. RETURNS AND REPORTS.

- 4470. In general.
- 4471. Constitutional and statutory provisions; rules and regulations.
- 4472. Necessity of return and effect of failure to make.
- 4473. Persons required to make.
- 4474. Time for making.
- 4475. Election of taxpayer.
- 4476. Period included.
- 4477. Form and sufficiency in general.
- 4478. Verification.
- 4479. Amendment or change.
- 4480. False or fraudulent returns or reports.
- 4481. Joint or separate returns of husband and wife.
- 4482. Inspection and disclosure.
- 4483. Evidence.

XX. EXAMINATION OF PERSONS AND RECORDS.

- 4490. In general.
- 4491. Constitutional and statutory provisions.
- 4492. Rules and regulations.
- 4493. Grounds and purposes.

XX. EXAMINATION OF PERSONS AND RECORDS.(Cont'd)

- 4494. Civil or criminal investigative purposes; recommendation of prosecution.
- 4495. Subjects and scope of examination.
- 4496. Relevance and materiality.
- 4497. Corporate records and officers.
- 4498. Periods which may be subject of inquiry.
- 4499. Examination of third persons and their records.
- 4500. Banks and bank records.
- 4501. Accountants, attorneys and their records.
- 4502. Work product privilege; tax practitioner privilege.
- 4503. Successive or unnecessary examinations.
- 4504. Proceedings in general.
- 4505. Requisites of summons or subpoena; issuance and service.
- 4506. Notice.
- 4507. Quashing or vacating summons or subpoena.
- 4508. Enforcement.
- 4509. Application for enforcement.
- 4510. Parties; intervention.
- 4511. Evidence and affidavits in general.
- 4512. Presumptions and burden of proof.
- 4513. Weight and sufficiency.
- 4514. Hearing and determination; findings.
- 4515. Orders.
- 4516. Compliance and failure to comply; contempt.
- 4517. Review.
- 4518. Use of information obtained.

XXI. ASSESSMENT OF TAXES.**(A) IN GENERAL.**

- 4520. In general.
- 4521. Constitutional and statutory provisions; rules and regulations.
- 4522. Powers and duties of commissioner in general.
- 4523. Powers and duties of assessors in general.
- 4524. Powers of court.
- 4525. Necessity of assessment.
- 4526. Income earned in different tax periods.

220. INTERNAL REVENUE**XXI. ASSESSMENT OF TAXES.(Cont'd)**

- 4527. Persons against whom made.
- 4528. Computation in general.
- 4529. Income and profits taxes, computation in general.
- 4530. Net worth increase and expenditures.
- 4530.1. — In general.
- 4531. — Propriety of resorting to method.
- 4532. Determination of invested capital.
- 4533. Valuation of property.
- 4534. Valuation of corporate stock.
- 4535. Determination of deductions and credits.
- 4535.1. — In general.
- 4536. — Expenses.
- 4537. — Depreciation, depletion, obsolescence, or exhaustion.
- 4538. — Losses.
- 4539. Items included in single assessment.
- 4540. Correction of assessment, reassessment, or additional assessment.
- 4541. Notice of assessment.
- 4542. Notice of deficiency tax.
- 4542.1. — In general.
- 4543. — Necessity, and effect of failure to give.
- 4544. — Persons notified.
- 4545. — Requisites and sufficiency.
- 4546. — Time for giving.
- 4547. — Service.
- 4548. Jeopardy and termination assessments.
- 4548.1. — In general.
- 4549. — Nature and purpose.
- 4550. — Power and discretion to impose.
- 4551. — Grounds.
- 4552. — Procedure in general.
- 4553. — Notice.
- 4554. Special assessments.
- 4555. Finality and conclusiveness.
- 4556. Presumption of regularity.
- 4557. Collateral attack.
- 4558. Record of assessments.
- 4559. Questions of law or fact.
- 4560. Estoppels.

(B) TIME FOR ASSESSMENT AND LIMITATIONS.**1. IN GENERAL.**

- 4565. In general.

XXI. ASSESSMENT OF TAXES.(Cont'd)

- 4566. Constitutional and statutory provisions; rules and regulations.
- 4567. Persons entitled to rely on limitations.
- 4568. Limitations applicable.
- 4569. Computation of period of limitations in general.
- 4570. Commencement of period of limitations.
- 4571. Request for prompt assessment.
- 4572. Effect of erroneous, false, or fraudulent returns; failure to file return.
- 4573. Suspension of limitations.
- 4574. Operation and effect of limitations.

2. WAIVERS AND CONSENTS.

- 4575. In general.
- 4576. Constitutional and statutory provisions; rules and regulations.
- 4577. Nature.
- 4578. Acts constituting.
- 4579. Persons authorized to execute.
- 4580. Form and contents in general.
- 4581. Requisites and validity in general.
- 4582. Validity of assent.
- 4583. Consideration.
- 4584. Time of making.
- 4584.1. — In general.
- 4585. — After bar by limitations.
- 4586. Approval by commissioner.
- 4586.1. — In general.
- 4587. — Signature by subordinates.
- 4588. Estoppel.
- 4589. Construction and operation.
- 4589.1. — In general.
- 4590. — Statutes as part of waivers.
- 4591. — Duration of extension.
- 4592. — Taxes included.
- 4593. Successive waivers.

(C) EVIDENCE.

- 4615. In general.
- 4616. Presumptions and burden of proof.
- 4616.1. — In general.
- 4617. — Value.
- 4618. — Corporate stock.
- 4619. Admissibility.
- 4619.1. — In general.
- 4620. — Value.

220. INTERNAL REVENUE**XXI. ASSESSMENT OF TAXES.**(Cont'd)

- 4621. — Corporate stock.
- 4622. Weight and sufficiency.
- 4623. — In general.
- 4624. — Fraud.
- 4625. — Limitations and waivers.

(D) RELIEF FROM ASSESSMENT.

- 4635. In general.
- 4636. Abatement.
- 4637. Injunction against assessment.
- 4638. Jeopardy and termination assessments.

(E) REVIEW BY TAX COURT.

- 4645. Nature, purpose, and proceedings in general.
Establishment and organization of Tax Court, see FEDERAL COURTS ¶2005.
- 4646. Rules of practice.
- 4647. Jurisdiction.
- 4648. Persons entitled to apply for review.
- 4649. Determinations reviewable in general.
- 4650. Presentation of grounds of review.
- 4651. Time of taking proceedings.
- 4652. Petitions and other pleadings.
- 4653. Effect of appeal.
- 4654. Dismissal or abatement.
- 4655. Trial or hearing.
- 4656. Scope and extent of review.
- 4657. Presumptions and burden of proof as to findings of commissioner.
- 4658. Questions of law.
- 4659. Questions of fact.
- 4660. Findings.
- 4660.1. — In general.
- 4661. — Necessity, and effect of failure to make.
- 4662. — Sufficiency.
- 4663. — Construction and operation.
- 4664. Decisions and orders.
- 4664.1. — In general.
- 4665. — Construction and operation.
- 4666. Reconsideration.
- 4666.1. — In general.
- 4667. — Discretion of Tax Court.
- 4668. Report.

(F) REVIEW OF TAX COURT DECISIONS.**1. IN GENERAL.**

- 4675. In general.
- 4676. Rules of Court.
- 4677. Jurisdiction and venue.
- 4678. Nature and form of remedy.
- 4679. Hearing and rehearing.
- 4680. Harmless error.

2. DECISIONS REVIEWABLE, RIGHT OF REVIEW, AND PRESENTATION OF GROUNDS OF REVIEW.

- 4685. Decisions reviewable.
- 4686. Right of review and parties.
- 4687. Presentation and reservation of grounds of review.

3. PROCEEDINGS FOR REVIEW.

- 4690. In general.
- 4691. Petition for review.
- 4692. Record and proceedings not in record.
- 4692.1. — In general.
- 4693. — Defects, objections, amendment, and correction.
- 4694. — Opinion of Tax Court.
- 4695. — Questions presented for review.
- 4696. — Effect of omission of evidence.
- 4697. Assignments of error.

4. SCOPE AND EXTENT OF REVIEW.

- 4700. In general.
- 4701. Moot questions.
- 4702. Theory and grounds of determination by Tax Court or Commissioner.
- 4703. Review dependent on findings.
- 4704. Parties entitled to allege error.
- 4705. Trial de novo.
- 4706. Review dependent on whether questions are of law or of fact.
- 4706.1. — In general.
- 4707. — What are questions of law or fact.
- 4708. — Mixed questions of law and fact.

5. DISCRETION OF TAX COURT OR OF COMMISSIONER.

- 4710. In general.
- 4711. Accounting and returns.
- 4712. Computation in general.
- 4713. Deductions.
- 4714. Special assessment.

220. INTERNAL REVENUE**6. PRESUMPTIONS.**

- 4715. In general.
- 4716. Assessment in general.
- 4717. Effect of evidence.
- 4718. Incomes taxable.
- 4719. Deductions.
- 4720. Value of property.
- 4721. Burden of showing error.
- 4721.1. — In general.
- 4722. — Incomes taxable.
- 4723. — Deductions.
- 4724. — Value of property.
- 4725. — Persons liable.
- 4726. Rebuttal of presumption.

7. QUESTIONS OF FACT AND FINDINGS.

- 4730. In general.
- 4731. Conclusiveness in general.
- 4732. Sufficiency of evidence.
- 4733. Weight of evidence.
- 4734. Findings contrary to opinion of reviewing tribunal.
- 4735. Stipulated facts.
- 4736. Undisputed evidence.
- 4737. Persons liable for payment.
- 4738. Incomes taxable.
- 4738.1. — In general.
- 4739. — Salaries, wages or compensation.
- 4740. — Dividends received.
- 4741. — Capital and capital increase.
- 4742. — Gains and profits from sales and exchanges.
- 4743. Deductions.
- 4743.1. — In general.
- 4744. — Expenses in general.
- 4745. — Compensation for services.
- 4746. — Losses in general.
- 4747. — Bad debts and worthless securities.
- 4748. — Depreciation, depletion, obsolescence, and exhaustion.
- 4749. Value.
- 4750. Persons, corporations, and associations liable.
- 4751. Special assessment.
- 4752. Conflicting evidence.

8. DETERMINATION AND DISPOSITION OF CAUSE.

- 4755. In general.

XXI. ASSESSMENT OF TAXES.(Cont'd)

- 4756. Remand.
- 4757. Proceedings after remand.

XXII. COMPROMISES AND CLOSING AGREEMENTS.

- 4760. Compromises.
- 4761. Closing agreements.
- 4761.1. — In general.
- 4762. — Validity of assent.

XXIII. LIENS.

- 4765. In general.
- 4766. Constitutional and statutory provisions; rules and regulations.
- 4767. What law governs.
- 4768. Creation.
- 4768.1. — In general.
- 4769. — Assessment.
- 4770. — Notice or demand.
- 4771. Property subject to lien.
- 4771.1. — In general.
- 4772. — Nature and situation of property in general.
- 4773. — Contingent rights; after-acquired property.
- 4774. — Contract rights.
- 4775. — Taxpayer's interest in general.
- 4776. — Cotenancy and partnership property.
- 4777. — Property subject to mortgage or other security interest.
- 4778. — Trust property.
- 4779. — Insurance.
- 4780. Accrual.
- 4781. Priority in general.
- 4782. Particular claims and liens, priority.
- 4782.1. — In general.
- 4783. — Assignments and other transfers.
- 4784. — Judicial proceedings, rights acquired by.
- 4785. — Mechanics' liens and other claims arising out of construction contracts.
- 4786. — Mortgages, pledges and similar security transactions.
- 4787. — Taxes and other governmental or municipal claims.
- 4788. Notice or record of federal lien affecting priority.
- 4788.1. — In general.

220. INTERNAL REVENUE**XXIII. LIENS.(Cont'd)**

- 4789. — Assignments and other transfers.
- 4790. — Judicial proceedings, rights acquired by.
- 4791. — Mechanics' liens and other claims arising out of construction contracts.
- 4792. — Mortgages, pledges and similar security transactions.
- 4793. Duration.
- 4794. Actions to enforce lien.
- 4794.1. — In general.
- 4795. — Defenses.
- 4796. — Time to sue and limitations.
- 4797. — Parties.
- 4798. — Jurisdiction, venue, and process.
- 4799. — Evidence.
- 4800. — Judgment and review.
- 4801. — Receivers.
- 4802. — Sale of property.
- 4803. Extinguishment.
- 4803.1. — In general.
- 4804. — Judicial cancellation and removal of cloud.
- 4805. — Transfer of title.
- 4806. — Release, waiver, and estoppel.

XXIV. PAYMENT.

- 4810. In general.
- 4811. Constitutional and statutory provisions; rules and regulations.
- 4812. Duty and necessity of payment in general.
- 4813. Notice and demand for payment.
- 4814. Who may pay.
- 4815. Persons who may be required to pay.
- 4815.1. — In general.
- 4816. — Debtors of persons primarily liable.
- 4817. — Transferees in general.
- 4818. — Estate and gift taxes.
- 4819. — Executors and administrators.
- 4820. — Recipients of bequests, devises and gifts.
- 4821. — Apportionment.
- 4822. Property or fund from which payable.
- 4823. Agreements for payment.
- 4824. Testamentary directions concerning payment.
- 4825. Who may receive payment.

XXIV. PAYMENT.(Cont'd)

- 4826. Place for payment.
- 4827. Time for payment.
- 4828. Mode and medium of payment.
- 4828.1. — In general.
- 4829. — By set off of prior overpayments.
- 4829.10. — Equitable recoupment.
- 4830. — "Flower" bonds.
- 4831. Amount due, interest and fees.
- 4832. Period and taxes covered by payments; application of payments.
- 4833. Evidence of payment.
- 4834. Operation and effect of payment in general.
- 4835. Rights resulting from payment by third persons or by fewer than all persons liable.
- 4836. Tender of payment and waiver thereof.

XXV. COLLECTION.**(A) IN GENERAL.**

- 4840. In general.
- 4841. Constitutional and statutory provisions; rules and regulations.
- 4842. What law governs.
- 4843. Powers and duties of officers in general.
- 4844. Compromise and settlement of liability.
- 4845. Collection by application of overpayments.
- 4846. Collection by corporations and others.
- 4847. — In general.
- 4848. — Income tax in general.
- 4849. — Withholding from wages.
- 4850. Rights and liabilities as to taxes uncollected.

(B) LEVY OR DISTRAINT.

- 4855. In general.
- 4856. Power and duty to distrain.
- 4857. Property subject to distraint.
- 4858. Liability of third person for refusal to surrender property on which levy has been made.
- 4859. Limitations.
- 4860. Sale.
- 4861. Certificate of sale.
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220. INTERNAL REVENUE**XXV. COLLECTION.(Cont'd)**

- 4864. Tax titles.
- 4865. Right to surplus.

XXVI. ACTIONS FOR TAXES.**(A) IN GENERAL.**

- 4870. Nature and form of remedy.
- 4871. Constitutional and statutory provisions; rules and regulations.
- 4872. Conditions precedent.
- 4873. Defenses.
- 4874. Jurisdiction and venue.

(B) TIME TO SUE AND LIMITATIONS.**1. IN GENERAL.**

- 4880. In general.
- 4881. Constitutional and statutory provisions.
- 4882. Rules and regulations.
- 4883. What law governs.
- 4884. Estoppel to rely on limitations.
- 4885. Suspension of statute.
- 4886. Actions against transferees.
- 4887. Operation and effect of statutory bar.
- 4888. Failure to obtain judgment before running of statute.

2. COMPUTATION OF PERIOD.

- 4890. Assessment.
- 4891. Return.
- 4892. Failure to make return and insufficient return.
- 4893. Fraudulent return.
- 4894. Redetermination by Tax Court.

3. WAIVER OF LIMITATIONS.

- 4895. In general.
- 4896. Requisites and validity in general.
- 4897. Waiver after running of statute.
- 4898. Construction, operation, and effect of waiver.
- 4899. Waiver of period for assessment as waiver of period for collection.
- 4900. Successive waivers.
- 4901. Expiration of waiver.
- 4902. Cancellation of waiver.

(C) PARTIES.

- 4903. In general.

(D) PROCESS AND APPEARANCE.

- 4904. In general.

(E) PLEADING.

- 4905. In general.
- 4906. Complaint, declaration, or petition.
- 4907. Answer.

(F) EVIDENCE.

- 4908. In general.
- 4909. Presumptions and burden of proof.
- 4910. Admissibility.
- 4911. Weight and sufficiency.

(G) TRIAL, JUDGMENT, AND REVIEW.

- 4912. In general.

XXVII. REMEDIES FOR WRONGFUL ENFORCEMENT.**(A) IN GENERAL.**

- 4915. In general.
- 4916. Restraining collection in general.
- 4917. Constitutional and statutory provisions; rules and regulations.
- 4918. Temporary injunction.

(B) TAXES AND SUITS WITHIN STATUTORY PROHIBITION.

- 4920. In general.
- 4921. Suits by persons other than taxpayers.

(C) GROUNDS FOR INJUNCTION.**1. IN GENERAL.**

- 4925. In general.
- 4926. Hardship on taxpayer.
- 4927. Illegality of tax, misconstruction of statute, or irregular proceedings thereunder.
- 4928. Premature collection.

2. SPECIAL GROUNDS OF EQUITY JURISPRUDENCE AND EXCEPTIONAL CIRCUMSTANCES.

- 4930. In general.
- 4930.10. Likelihood of prevailing; exceptional circumstances.
- 4931. Irreparable injury or inadequacy of legal or administrative remedy.
- 4932. Multiplicity of actions.

220. INTERNAL REVENUE**(D) PROCEEDINGS.**

- 4935. In general.
- 4936. Time to sue and limitations.
- 4937. Parties, process, and appearance.
- 4938. Pleading.
- 4939. Evidence.
- 4940. Trial, judgment and review.

XXVIII. REFUNDING TAXES.**(A) IN GENERAL.**

- 4950. In general.
- 4951. Constitutional and statutory provisions.
- 4952. Rules and regulations.
- 4953. Power to refund.
- 4954. Waiver and estoppel.
- 4955. Persons entitled to refund.
- 4956. Nature, form, and exclusiveness of remedy.
- 4957. Grounds and right to refund.
- 4958. Interest.
- 4959. Effect of false or fraudulent return.
- 4960. Limitations.
- 4961. Necessity of filing claim for refund.
- 4962. Claim for refund in general.
- 4963. Nature, form, and requisites of claim in general.
- 4964. Sufficient claims.
- 4965. Insufficient claims.
- 4966. Amendment of claims.
- 4967. Waiver of defects in claims.
- 4968. Scope of inquiry and hearing.
- 4969. Allowance and payment in general.
- 4970. Effect of allowance or disallowance of claim.
- 4971. Rehearing.
- 4972. Administrative and judicial review.
- 4973. Right to proceeds; interception of refunds.
- 4974. Erroneous refunds and actions to recover them.

(B) ACTIONS FOR REFUNDS.**1. IN GENERAL.**

- 4980. In general.
- 4981. Constitutional and statutory provisions.
- 4982. Rules and regulations.
- 4983. Nature, form and exclusiveness of remedy.
- 4984. Jurisdiction and venue.

2. GROUNDS OF ACTION.

- 4990. In general.
- 4991. Illegality of statute or regulation.
- 4992. Mistake of fact or law.
- 4993. Wrongful assessment or collection.
- 4994. Collection after bar by limitations.

3. CONDITIONS PRECEDENT.

- 5000. In general.
- 5001. Appeal to commissioner.
- 5002. Claim for refund.
- 5002.1. — In general.
- 5003. — Necessity.
- 5004. — Time for making.
- 5005. — Sufficiency.
- 5006. — Amendment or new claim.
- 5007. — Variance between claim and grounds of action.
- 5008. — Waiver.
- 5009. Protest.
- 5009.1. — In general.
- 5010. — Necessity of protest.
- 5011. — Voluntary or involuntary payments.
- 5012. — Sufficiency of protest.

4. DEFENSES.

- 5015. In general.
- 5016. Compromise and settlement.
- 5017. Election of remedies.
- 5018. Equitable defenses.
- 5019. False or fraudulent return.
- 5020. Payment after running of statute of limitations.
- 5020.1. — In general.
- 5021. — Waiver of limitations.
- 5022. — Claim in abatement and stay of collection.
- 5023. Payment into treasury and further disposition of payment.
- 5024. Set-off and counterclaim.
- 5025. Equitable recoupment.

5. TIME TO SUE AND LIMITATIONS.

- 5030. In general.
- 5031. Constitutional and statutory provisions; rules and regulations.
- 5032. Time when action may be brought.
- 5033. Limitations applicable.

220. INTERNAL REVENUE**XXVIII. REFUNDING TAXES.(Cont'd)**

- 5034. Estoppel or waiver.
- 5035. Extension of time and suspension of limitations.
- 5036. — In general.
- 5037. — Agreements.
- 5038. Account stated.
- 5039. Allowance of claim for refund or credit.
- 5040. Certificate of overpayment or overassessment.
- 5041. Commencement of action.
- 5042. Disallowance of claim.
- 5043. Failure to act or delay in acting on claim.
- 5044. Notice of disallowance of claim.
- 5045. Rehearing.
- 5046. Time of assessment.
- 5047. Time of payment.
- 5048. Time of return.
- 5049. Adjustment in order to mitigate effect of limitations.

**6. PERSONS ENTITLED TO SUE
AND PERSONS LIABLE.**

- 5055. Persons entitled to sue.
- 5055.1. — In general.
- 5056. — Shifting burden of tax.
- 5057. Persons liable.
- 5057.1. — In general.
- 5058. — Certificate of probable cause.

**7. PARTIES, PRELIMINARY PROCEEDINGS
AND PLEADING.**

- 5065. In general.
- 5066. Parties.
- 5067. Process and appearance.
- 5068. Pleading in general.
- 5069. Complaint.
- 5070. Answer.
- 5071. Issues, proof and variance.

8. EVIDENCE.

- 5075. Presumptions and burden of proof.
- 5076. — In general.
- 5077. — Limitations and waivers.
- 5078. — Ignorance, mistake, fraud or duress.
- 5079. — Overpayment.
- 5080. — Claims for refund.
- 5081. Admissibility.

XXVIII. REFUNDING TAXES.(Cont'd)

- 5082. Weight and sufficiency.
- 5083. — In general.
- 5084. — Overpayment.
- 5085. — Limitations and waivers.
- 5086. — Fraud, duress or mistake.
- 5087. — Proceedings for refund.
- 5088. — Right to interest on refund.

9. TRIAL, JUDGMENT AND REVIEW.

- 5095. Trial.
- 5096. Judgment and relief awarded in general.
- 5097. Interest.
- 5097.1. — In general.
- 5098. — Dependent on statute.
- 5099. — Statutes and regulations applicable.
- 5100. — Deficiency assessments.
- 5101. — Special assessments.
- 5102. — On judgments.
- 5103. — Overpayment credited against taxes or other obligations.
- 5104. — Time from which interest runs.
- 5105. — Time to which interest runs.
- 5106. — Period for which allowed.
- 5107. — Rate and amount.
- 5108. — Persons entitled.
- 5109. — Necessity and sufficiency of claim for refund.
- 5110. — Waiver or loss of right.
- 5111. Review.
- 5111.1. — In general.
- 5112. — Scope of review in general.
- 5113. — Presumptions.
- 5114. — Fact questions in general.
- 5115. — Particular fact questions.
- 5116. — Harmless error.
- 5117. — Determination and disposition.

XXIX. SEARCHES AND SEIZURES.

- 5125. In general.
- 5126. Searches under warrant.
- 5127. Searches without warrant.
- 5128. Seizures.
- 5129. Injunctions against searches and seizures.

220. INTERNAL REVENUE**XXX. FORFEITURES.****(A) IN GENERAL.**

- 5140. In general.
- 5141. Constitutional and statutory provisions; rules and regulations.
- 5142. Knowledge and intent.
- 5143. Effect of conviction or other punishment.
- 5144. Rights of third persons.
- 5144.1. — In general.
- 5145. — Owners in general.
- 5146. — Conditional vendors.
- 5147. — Lessors or bailors.
- 5148. — Bona fide purchasers.
- 5149. — Lienors in general.
- 5150. — Mortgagees.

(B) PROPERTY SUBJECT TO FORFEITURE AND GROUNDS THEREFOR.

- 5155. In general.
- 5156. Fraud in general.
- 5157. Confusion of goods.
- 5158. Failure to give bond and giving of false bond.
- 5159. False books.
- 5160. Instrumentalities used to conceal or remove goods with intent to defraud.
- 5161. Unmarked or unstamped goods.

(C) PROCEEDINGS AND RELIEF.

- 5165. In general.
- 5166. Statutes under which proceedings may be had.
- 5167. Nature and form of remedy.
- 5168. Custody of goods pending final hearing.
- 5169. Conditions precedent.
- 5170. Defenses.
- 5171. Discovery.
- 5172. Jurisdiction and venue.
- 5173. Parties.
- 5174. Process and appearance.
- 5175. Information or libel.
- 5176. Answer and other pleadings.
- 5177. Presumptions and burden of proof.
- 5178. Admissibility of evidence.
- 5179. Weight and sufficiency of evidence.
- 5180. Trial.
- 5181. Judgment.
- 5182. Effective date of forfeiture.
- 5183. Review.

XXX. FORFEITURES.(Cont'd)

- 5185. Disposition of forfeited goods.
- 5186. Injunctions against forfeiture proceedings.

(D) MITIGATION AND REMISSION.

- 5190. In general.
- 5191. Construction of statutes providing for remission.
- 5192. Power to remit.
- 5193. Discretion.
- 5194. Diligence and good faith.
- 5195. Evidence.

XXXI. PENALTIES AND ADDITIONS TO TAX.**(A) IN GENERAL.**

- 5200. In general.
- 5201. Constitutional and statutory provisions; rules and regulations.
- 5202. Persons liable.
- 5203. — In general.
- 5204. — Persons responsible for collection in general.
- 5205. — Corporate officers, agents or employees.
- 5206. — Stockholders.
- 5207. — Husband or wife.
- 5208. What constitutes a penalty.

(B) GROUNDS AND AMOUNT.

- 5215. In general.
- 5216. Failure to keep books.
- 5217. Failure to make returns.
- 5217.10. Frivolous returns.
- 5217.15. — In general.
- 5217.20. — Documents constituting returns.
See also ¶4477.
- 5217.25. — Absence of required information.
- 5217.30. — Assertion of privilege to withhold information.
- 5217.35. — Incorrect information.
- 5217.40. — Impermissible deductions, credits, exemptions or exclusions from income.
- 5217.45. — Defects in or absence of signature or verification.
- 5217.50. — Alteration of forms.
- 5217.55. — Good faith or intent.

220. INTERNAL REVENUE**XXXI. PENALTIES AND ADDITIONS
TO TAX.**(Cont'd)

- 5217.60. Failure to pay tax in general.
- 5217.70. Disregard of rules or regulations.
- 5218. Fraud.
- 5219. Negligence.
- 5219.10. Reasonable cause.
- 5219.20. Failure to collect or pay withholding taxes.
- 5219.21. — In general.
- 5219.25. — Willfulness.
- 5219.30. — Reasonable cause.
- 5219.40. Failure to make or insufficiency of estimated tax payments.
- 5219.50. Abusive tax shelters.
- 5219.60. Misconduct of tax preparers.
- 5219.70. Failure to surrender property subject to levy.
- 5220. Amount.

(C) ASSESSMENT.

- 5225. In general.
- 5226. Nature and form of remedy.
- 5227. Necessity for hearing.
- 5228. Defenses.
- 5229. Actions.
- 5230. Limitation of actions.
- 5231. Process, appearance, and pleading.
- 5232. Evidence.
- 5232.1. — In general.
- 5233. — Presumptions and burden of proof in general.
- 5234. — Fraud, presumptions and burden of proof.
- 5235. — Weight and sufficiency in general.
- 5236. — Fraud, sufficiency of evidence.
- 5237. Trial.
- 5238. Review.

(D) COMPROMISE.

- 5240. In general.

(E) REMISSION.

- 5241. In general.

(F) INJUNCTIONS.

- 5245. In general.

(G) ACTIONS FOR REFUND.

- 5246. In general.

XXXII. OFFENSES.**(A) IN GENERAL.**

- 5250. In general.
- 5251. Constitutional and statutory provisions.
- 5252. Alcohol and intoxicating liquors in general.
- 5253. Recovering by distillation alcohol unfit for beverage or medicinal purposes.
- 5254. Shipping liquors under wrong name.
- 5255. Stills and distilleries.
- 5256. Unlawful removal of distilled spirits.
- 5257. Stamps, offenses involving.
- 5258. Unstamped goods.
- 5259. Drugs and narcotics.
- 5260. Failure to keep books or records.
- 5261. Failure to make returns.
- 5262. Failure to pay tax.
- 5263. False returns or statements and attempts to defeat tax; evasion.
- 5263.10. — In general.
- 5263.15. — Attempts to evade or defeat tax.
- 5263.20. — Fraud and false statements.
Excludes filing false return as affirmative act of evasion, see 5263.15.
- 5263.25. — Returns, statements or documents subject to regulation.
- 5263.30. — Materiality and substantiality.
- 5263.35. — Willfulness, intent or knowledge.
- 5263.40. — Corporate returns.
- 5263.45. — Withholding exemptions.
- 5263.50. — Promotion of tax shelters.
- 5263.55. — Aiders and abettors; tax return preparers.
- 5263.60. — Advice of attorney, accountant or tax return preparer.
- 5264. Interference with officers.
- 5265. Firearms and destructive devices.
- 5266. Publication of tax information.
- 5267. Refusal to give information.
- 5268. Simulation of documents.
- 5269. Offenses by officers.
- 5270. Wagering.

(B) CRIMINAL PROSECUTION.

- 5280. In general.
- 5281. Limitation of prosecutions.
- 5282. Indictment and information.
- 5282.1. — In general.

220. INTERNAL REVENUE**XXXII. OFFENSES.**(Cont'd)

- 5283. — Alcohol and intoxicating liquors.
- 5284. — Books and records.
- 5285. — Drugs and narcotics.
- 5286. — Failure to make returns, false returns and evasion of tax.
- 5287. — Failure to pay tax.
- 5288. — Firearms and destructive devices.
- 5289. — Stamps.
- 5290. — Issues, proof and variance.
- 5291. Presumptions and burden of proof.
- 5291.1. — In general.
- 5292. — Net worth method.
- 5293. — Expenditures or bank-deposits method.
- 5294. Admissibility of evidence.
- 5295. Weight and sufficiency of evidence in general.
- 5296. Assaulting and resisting officers, weight and sufficiency.
- 5297. Evasion of taxes, weight and sufficiency.
- 5298. — In general.
- 5299. — Particular cases.
- 5300. — Motive, intent, and willfulness.
- 5301. — Failure to file return.
- 5302. — Unreported or understated income.
- 5303. — False or fraudulent returns.
- 5304. — Persons liable; corporate taxes.
- 5305. — Net worth method, in general.
- 5306. — Opening net worth.
- 5307. Offenses relating to liquors in general, weight and sufficiency.
- 5308. Offenses by liquor dealers, weight and sufficiency.
- 5309. Offenses relating to stills and distillers, weight and sufficiency.
- 5310. Trial in general.
- 5311. Questions for jury.
- 5311.1. — In general.
- 5312. — Income tax evasion in general.
- 5313. — Intent and willfulness, income tax evasion.
- 5314. — Net worth issues.
- 5315. — Liquor offenses.
- 5316. — Narcotics offenses.
- 5317. Instructions.
- 5318. Verdict.
- 5319. Judgment, sentence, punishment, and review.

XXXIII. DISPOSITION OF PROCEEDS OF PENALTIES, FORFEITURES, AND FINES.

- 5325. In general.
- 5326. Persons entitled to share in proceeds.
- 5326.1. — In general.
- 5327. — Government officers and agents.

XXXIV. COSTS AND FEES.

Excludes penalties and additions to tax, see §5200 et seq., costs in criminal prosecutions, see COSTS §284 et seq., and costs awarded pursuant to Equal Access to Justice Act, see UNITED STATES §1129.

- 5330. In general.
- 5331. Constitutional and statutory provisions.
- 5332. Awards to government.
- 5333. — In general.
- 5334. — Frivolous or meritless conduct; bad faith.
- 5335. — Particular proceedings.
- 5336. — Quashing or enforcing summonses.
- 5337. — Penalties and additions to tax, actions involving.
- 5338. — Appeals.
- 5339. — Amount.
- 5340. Awards to taxpayers.
- 5341. — In general.
- 5342. — Reasonableness or merits of government's position; bad faith.
- 5343. — Particular proceedings.
- 5344. — Quashing or enforcing summonses.
- 5345. — Refunds, actions for.
- 5346. — Appeals.
- 5347. — Amount.
- 5348. Taxation.
- 5349. Evidence.

221. INTERNATIONAL LAW**SUBJECTS INCLUDED**

Customary law recognized by civilized nations as regulating their mutual relations and

221. INTERNATIONAL LAW

intercourse, more particularly in time of peace

Its sources, principles, and rules, and its application in general

Diplomatic, consular, and other foreign officers and agents

Neutrality, breaches of and other hostile acts by private persons against a foreign nation at peace with the United States

Agreements between independent nations, whether designated as treaties or as conventions, compacts, etc.

Recognition in one nation of the acts and laws of another nation

Immunity of, proceedings involving, and enforcement of judgments against foreign sovereigns

International organizations and tribunals

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Aliens' rights and disabilities, see ALIENS, IMMIGRATION, AND CITIZENSHIP

Arbitration of international disputes between private parties, see ALTERNATIVE DISPUTE RESOLUTION

Comity between courts of different countries, see COURTS

Foreign judgments, effect of, see JUDGMENT and other specific topics

Passports and travel documents, see ALIENS, IMMIGRATION, AND CITIZENSHIP

Piracy, see CRIMINAL LAW ¶45.50

Slave trade, see HUMAN TRAFFICKING AND SLAVERY ¶122

War and rights of belligerents and neutrals, see WAR AND NATIONAL EMERGENCY

I. IN GENERAL, ¶101–130.

II. SOVEREIGNTY IN GENERAL, ¶131–160.

III. INTERNATIONAL RELATIONS AND FOREIGN AFFAIRS, ¶161–230.

(A) IN GENERAL, ¶161–170.

(B) EMBASSIES, FOREIGN MISSIONS, AND DIPLOMATIC PERSONNEL, ¶171–200.

(C) FOREIGN AGENTS, ¶201–210.

(D) NEUTRALITY LAWS, ¶211–220.

III. INTERNATIONAL RELATIONS AND FOREIGN AFFAIRS—Cont'd

(E) RESOLUTION OF CLAIMS AND DISPUTES BETWEEN SOVEREIGNS, ¶221–230.

IV. TREATIES, CONVENTIONS, AND OTHER INTERNATIONAL AGREEMENTS, ¶231–320.

(A) IN GENERAL, ¶231–250.

(B) CONSTRUCTION AND OPERATION, ¶251–300.

1. IN GENERAL, ¶251–270.

2. PARTICULAR SUBJECTS, ¶271–300.

(C) IMPLEMENTATION, PERFORMANCE, AND ENFORCEMENT, ¶301–320.

V. EXTRATERRITORIAL OPERATION AND EFFECT OF DOMESTIC ACTS AND LAWS, ¶321–400.

(A) IN GENERAL, ¶321–340.

(B) OPERATION AND EFFECT IN UNITED STATES OF FOREIGN ACTS AND LAWS, ¶341–390.

1. IN GENERAL, ¶341–350.

2. PARTICULAR SUBJECTS, ¶351–370.

3. CHOICE OF FOREIGN OR UNITED STATES LAW IN PRIVATE DISPUTES; WHAT LAW GOVERNS, ¶371–380.

4. DETERMINATION OF FOREIGN LAW, ¶381–390.

(C) FOREIGN OPERATION AND EFFECT OF UNITED STATES ACTS AND LAWS, ¶391–400.

VI. CLAIMS ASSERTABLE AGAINST FOREIGN SOVEREIGNS; FOREIGN SOVEREIGN IMMUNITY, ¶401–500.

(A) IN GENERAL, ¶401–420.

(B) PERSONS ENTITLED TO IMMUNITY, ¶421–430.

(C) SCOPE OF IMMUNITY; NATURE OF CLAIMS ASSERTABLE, ¶431–460.

(D) WAIVER OF IMMUNITY BY FOREIGN SOVEREIGN, ¶461–470.

(E) PROCEEDINGS TO DETERMINE IMMUNITY, ¶471–490.

(F) EXTENT OF LIABILITY IN ABSENCE OF IMMUNITY, ¶491–500.

VII. ACTIONS AND PROCEEDINGS INVOLVING FOREIGN SOVEREIGNS, ¶501–520.

221. INTERNATIONAL LAW**VIII. ENFORCEMENT OF JUDGMENTS
AGAINST FOREIGN SOVEREIGNS,** ¶521–540.**IX. INTERNATIONAL ORGANIZATIONS
AND TRIBUNALS,** ¶541–554.**I. IN GENERAL.**

- 101. In general.
- 102. Sources of international law.
- 103. — In general.
- 104. — Customary international law; law of nations.
- 105. — Peremptory norms; jus cogens.
- 106. — Treaties, conventions, and other international agreements.
- 107. Relationship between international law and domestic law.
- 108. — In general.
- 109. — Domestic statutes and regulations.
- 110. — Effect of absence of domestic law.
- 111. Persons and entities subject to international law.
- 112. Rights granted or protected.
- 113. — In general.
- 114. — Human rights.
- 115. Conduct regulated, prohibited, or required.
- 116. — In general.
- 117. — State or individual action in general.
- 118. — Violent or criminal acts in general.
- 119. — Detention, imprisonment, and punishment in general.
- 120. — Torture.
- 121. — Genocide.
- 122. — Human trafficking, slavery, and forced labor.
- 123. Enforcement, remedies, and proceedings.
- 124. — In general.
- 125. — Private enforcement.
- 126. Determination of international law; pleading and evidence.

Judicial notice of international law, see EVIDENCE
 ¶38.

II. SOVEREIGNTY IN GENERAL.

- 131. In general.
- 132. Existence and identity of sovereign states.
- 133. Recognition of sovereignty.

II. SOVEREIGNTY IN GENERAL.(Cont'd)

- 134. Powers, duties, and liabilities.
- 135. Territorial extent and jurisdiction.
- 136. — In general.
- 137. — Inland waters.
- 138. — Coastal waters.
- 139. — Acquisition and cession of territory.
- 140. — Application of laws within territorial jurisdiction.
- 141. Change of sovereignty.
- 142. — In general.
- 143. — Civil war and rebellion.
- 144. — Revolutionary and de facto governments.
- 145. — Former government continuing to function; government in exile.
- 146. Political subdivisions, agencies, and instrumentalities.
- 147. Officials and heads of state.
- 148. — In general.
- 149. — Immunity in general.
- 150. — Foreign-official immunity.
- 151. — Head-of-state immunity.
- 152. — Exceptions to immunity; waiver.
- 153. — Actions and proceedings.
- 154. Nationality and allegiance.

**III. INTERNATIONAL RELATIONS
AND FOREIGN AFFAIRS.**

*Freezing of assets, see WAR AND NATIONAL
 EMERGENCY.*

(A) IN GENERAL.

- 161. In general.
- 162. International comity in general.
- 163. International intervention in general.

**(B) EMBASSIES, FOREIGN MISSIONS,
AND DIPLOMATIC PERSONNEL.**

Construction and operation of treaties concerning diplomatic and consular relations, see ¶283. Representatives in international organizations and tribunals, see IX.

- 171. In general.
- 172. Appointment, qualification, and tenure of personnel.
- 173. — In general.
- 174. — Ambassadors and consuls.
- 175. Compensation of personnel.
- 176. Powers, duties, and liabilities.
- 177. Privileges and immunities.

221. INTERNATIONAL LAW**III. INTERNATIONAL RELATIONS AND FOREIGN AFFAIRS.**(Cont'd)

- 178. — In general.
- 179. — Diplomatic immunity in general.
- 180. — Consular immunity in general.
- 181. — Exceptions; waiver.
- 182. Diplomatic and consular premises and property.
- 183. — In general.
- 184. — Privileges and immunities.
- 185. Consular courts.
- 186. Consular fees.
- 187. Actions and proceedings.
- 188. — In general.
- 189. — Jurisdiction.
Federal jurisdiction over cases affecting ambassadors, other public ministers, or consuls, see FEDERAL COURTS Ⓒ2059.
- 190. — Evidence; questions of law or fact.
- 191. Criminal offenses and prosecutions.

(C) FOREIGN AGENTS.

- 201. In general.
- 202. Registration, notification, and disclosure.
- 203. Criminal prosecutions.

(D) NEUTRALITY LAWS.

- 211. In general.
- 212. Nature and elements of offenses.
- 213. Forfeitures of vessels and enforcement thereof.
- 214. Criminal prosecutions.

(E) RESOLUTION OF CLAIMS AND DISPUTES BETWEEN SOVEREIGNS.

- 221. In general.
- 222. Assertion by sovereigns of private claims and disputes; espousal.

IV. TREATIES, CONVENTIONS, AND OTHER INTERNATIONAL AGREEMENTS.

Treaties with Indian tribes, see INDIANS. Treaties of cession, see PUBLIC LANDS Ⓒ2, 198, *TERRITORIES* Ⓒ6.

(A) IN GENERAL.

- 231. In general.
- 232. Nature of obligation.
- 233. Power to make.
- 234. Requisites and validity.
- 235. — In general.
- 236. — Parties.

IV. TREATIES, CONVENTIONS, AND OTHER INTERNATIONAL AGREEMENTS.(Cont'd)

- 237. — Assent and ratification.
- 238. Duration, suspension, and termination.
- 239. — In general.
- 240. — State-succession doctrine.
- 241. Amendment and modification.
- 242. Abrogation, dissolution, and repeal.

(B) CONSTRUCTION AND OPERATION.**1. IN GENERAL.**

- 251. In general.
- 252. Purpose and intent in general.
- 253. Language in general.
- 254. — In general.
- 255. — Purpose and intent.
- 256. — Plain language; plain, ordinary, or common meaning.
- 257. Clarity and ambiguity; multiple meanings.
- 258. Agreement as a whole; relation of parts to whole and to one another.
- 259. Extrinsic aids to construction.
- 260. — In general.
- 261. — Negotiation, drafting, or ratification history.
- 262. — Legislative or executive construction.
- 263. Determination of construction; pleading and evidence.
Judicial notice of treaties, see EVIDENCE Ⓒ39.
- 264. Time of taking effect.
- 265. Retroactive or prospective operation.

2. PARTICULAR SUBJECTS.

- 271. In general.
- 272. Individual rights in general.
- 273. Families and children.
Treaties concerning child custody and abduction, see CHILD CUSTODY XI.
- 274. Refugees.
Aliens seeking asylum or withholding of removal under treaties against torture, see ALIENS, IMMIGRATION, AND CITIZENSHIP VII(E).
- 275. Property, commerce, and trade in general.
Treaties concerning property rights of aliens, see ALIENS, IMMIGRATION, AND CITIZENSHIP Ⓒ130(3), 131(11). *Treaties concerning carriage of goods or passengers, see CARRIERS.*
- 276. Taxation.
Treaties concerning tariffs, see CUSTOMS DUTIES.

221. INTERNATIONAL LAW**IV. TREATIES, CONVENTIONS, AND OTHER INTERNATIONAL AGREEMENTS.(Cont'd)**

- 277. Labor and employment.
- 278. Copyrights and intellectual property.
Treaties concerning trademarks, see TRADEMARKS.
- 279. Automobiles.
Treaties concerning carriage of goods or passengers, see CARRIERS.
- 280. Aviation.
Treaties concerning carriage of goods or passengers, see CARRIERS.
- 281. Seas, rivers, and other waters; maritime matters.
Treaties concerning international water resources management, see WATER LAW ¶1051.
- 282. Wildlife, natural resources, and environmental protection.
- 283. Diplomatic and consular relations.
- 284. — In general.
- 285. — Rights of foreign nationals; consular notification.
- 286. International organizations and tribunals.
- 287. Weapons, war, and military matters.
Peace treaties, see WAR AND NATIONAL EMERGENCY ¶1099.
- 288. Litigation.
- 289. — In general.
Treaties concerning right to actions by or against aliens, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶135.
- 290. — Process or other notice; service.
- 291. — Evidence and discovery.
- 292. Alternative dispute resolution.
- 293. Criminal justice.
- 294. — In general.
Treaties concerning international extradition, see EX-TRADITION AND DETAINERS I(A).
- 295. — Process or other notice; service.
- 296. — Evidence and discovery.
Effect of treaty violations on admissibility of evidence in criminal proceedings, see CRIMINAL LAW ¶392.11, 392.31, 411.13.
- 297. Drugs and narcotics.
- 298. Searches, seizures, and forfeitures.
- 299. Punishment, torture, and genocide.
Aliens seeking asylum or withholding of removal under treaties against torture, see ALIENS, IMMIGRATION, AND CITIZENSHIP VII(E).
- 300. Terrorism, hostage-taking, and related activity.

(C) IMPLEMENTATION, PERFORMANCE, AND ENFORCEMENT.

- 301. In general.

IV. TREATIES, CONVENTIONS, AND OTHER INTERNATIONAL AGREEMENTS.(Cont'd)

- 302. Relationship between international agreements and domestic law; supremacy and preemption.
- 303. — In general.
- 304. — Constitutional law.
- 305. — Legislation; statutes, regulations, and ordinances.
- 306. — Common law.
- 307. — Procedural law; court rules.
- 308. — Self-executing agreements; implementing legislation.
- 309. Persons entitled to enforce.
- 310. — In general.
- 311. — Private parties; privately enforceable rights.
- 312. Challenges to implementation and enforcement.

V. EXTRATERRITORIAL OPERATION AND EFFECT OF DOMESTIC ACTS AND LAWS.**(A) IN GENERAL.**

- 321. In general.
- 322. Criminal law in general.
- 323. Extraterritorial jurisdiction.
- 324. — In general.
- 325. — Prescriptive jurisdiction.
- 326. — Adjudicative jurisdiction.
- 327. — Enforcement jurisdiction.
- 328. Principles of extraterritoriality.
- 329. — In general.
- 330. — Conduct affecting domestic territory; objective and subjective principles.
- 331. — Nationality of persons or entities involved; active and passive personality principles.
- 332. — National interests and security; protective principle.
- 333. Universal jurisdiction; universality principle.
- 334. Operation and effect in international waters or high seas.
- 335. Choice of law in private disputes; private international law.

(B) OPERATION AND EFFECT IN UNITED STATES OF FOREIGN ACTS AND LAWS.**1. IN GENERAL.**

- 341. In general.

221. INTERNATIONAL LAW

**V. EXTRATERRITORIAL OPERATION AND
EFFECT OF DOMESTIC ACTS AND
LAWS.(Cont'd)**

- 342. Act-of-state doctrine.
- 343. Excusing compliance with United States law; foreign-state compulsion.

2. PARTICULAR SUBJECTS.

- 351. In general.
- 352. Personal status, rights, and liabilities.
- 353. Property and confiscation thereof.
- 354. — In general.
- 355. — Real property.
- 356. — Vessels and cargoes.
- 357. — Bank accounts and financial instruments.
- 358. — Intellectual property.
- 359. — Nationalization of property.
- 360. — Assignment of nationalized property.
- 361. Taxation and revenue.
- 362. Access to records and information; subpoenas and discovery.
- 363. Criminal justice.
- 364. — In general.
- 365. — Criminal investigations.

**3. CHOICE OF FOREIGN OR UNITED STATES
LAW IN PRIVATE DISPUTES; WHAT LAW
GOVERNS.**

- 371. In general.
- 372. Particular subjects.
See also lines in particular topics concerning what law governs.

4. DETERMINATION OF FOREIGN LAW.

- 381. In general.
- 382. Notice of intent to raise or rely on foreign law.
- 383. Pleading.
- 384. Evidence in general.
Judicial notice of laws of foreign countries, see EVIDENCE ¶37.
- 385. Presumptions and burden of proof.
- 386. — In general.
- 387. — Act-of-state doctrine.
- 388. Foreign interpretations, and deference thereto.

**(C) FOREIGN OPERATION AND EFFECT OF
UNITED STATES ACTS AND LAWS.**

- 391. In general.

**V. EXTRATERRITORIAL OPERATION AND
EFFECT OF DOMESTIC ACTS AND
LAWS.(Cont'd)**

- 392. Federal acts and laws in general.
- 393. Presumption against extraterritoriality.
- 394. Particular subjects.
See also particular topics.
- 395. — In general.
- 396. — Criminal justice.
- 397. Operation and effect in international waters or high seas.

**VI. CLAIMS ASSERTABLE AGAINST FOREIGN
SOVEREIGNS; FOREIGN SOVEREIGN
IMMUNITY.****(A) IN GENERAL.**

- 401. In general.
- 402. Constitutional and statutory provisions.
- 403. — In general.
- 404. — Purpose and construction in general.
- 405. — Validity.
- 406. — Retroactive or prospective operation.
- 407. Relationship between international law and United States law.
- 408. — In general.
- 409. — Treaties, conventions, and other international agreements.
- 410. Exclusive and concurrent laws and remedies.
- 411. Exhaustion of other remedies.

(B) PERSONS ENTITLED TO IMMUNITY.

- 421. In general.
- 422. Foreign states and sovereigns in general.
- 423. Political subdivisions.
- 424. Agencies, instrumentalities, and organs.
- 425. Corporations.
- 426. Officials and other individuals.

**(C) SCOPE OF IMMUNITY; NATURE
OF CLAIMS ASSERTABLE.**

- 431. In general.
- 432. Exceptions to immunity in general.
- 433. Commercial activity.
- 434. Property.
- 435. — In general.
- 436. — Property located in United States.

221. INTERNATIONAL LAW**VI. CLAIMS ASSERTABLE AGAINST FOREIGN SOVEREIGNS; FOREIGN SOVEREIGN IMMUNITY.**(Cont'd)

- 437. — Property taken in violation of international law; expropriation.
- 438. — Vessels and cargoes; maritime liens and mortgages.
- 439. Torts.
- 440. — In general.
- 441. — Discretionary functions in general.
- 442. — Malicious prosecution and abuse of process.
- 443. — Libel and slander; defamation.
- 444. — Misrepresentation, deceit, and interference with contract rights.
- 445. Terrorism and related activity.
- 446. — In general.
- 447. — Torture.
- 448. — Extrajudicial killing.
- 449. — Aircraft sabotage.
- 450. — Hostage taking.
- 451. Works of art and other objects of cultural significance.
- 452. Counterclaims, set-offs, and defenses.
- 453. Prejudgment or provisional remedies.
- 454. Arbitration agreements and proceedings.
- 455. Criminal offenses and prosecutions.

(D) WAIVER OF IMMUNITY BY FOREIGN SOVEREIGN.

- 461. In general.
- 462. Express waiver in general.
- 463. Implied waiver in general.
- 464. Waiver by contract.
- 465. Treaties, conventions, and other international agreements.
- 466. Waiver by litigation conduct.
- 467. Termination or withdrawal of waiver.

(E) PROCEEDINGS TO DETERMINE IMMUNITY.

- 471. In general.
- 472. Pleading.
- 473. Evidence.
- 474. — In general.
- 475. — Presumptions and burden of proof.
- 476. — Weight and sufficiency.
- 477. Official assertion of immunity, and conclusiveness thereof.
- 478. — In general.

VI. CLAIMS ASSERTABLE AGAINST FOREIGN SOVEREIGNS; FOREIGN SOVEREIGN IMMUNITY.(Cont'd)

- 479. — Assertion by United States government.
- 480. — Assertion as to vessels and cargoes.
- 481. Trial or hearing; determination and judgment.
- 482. — In general.
- 483. — Questions of law or fact.

(F) EXTENT OF LIABILITY IN ABSENCE OF IMMUNITY.

- 491. In general.
- 492. Punitive damages in general.
- 493. Damages for causing death.
- 494. Interest.

VII. ACTIONS AND PROCEEDINGS INVOLVING FOREIGN SOVEREIGNS.

- 501. In general.
- 502. Capacity and right to sue or be sued.
- 503. What law governs.
- 504. Jurisdiction.
- 505. — In general.
- 506. — Personal jurisdiction.
- 507. Time to sue; limitations and laches.
- 508. Parties; standing.
- 509. — In general.
- 510. — Parens patriae.
- 511. Process.
- 512. Pleading.
- 513. Evidence.
- 514. — In general.
- 515. — Presumptions and burden of proof.
- 516. — Weight and sufficiency.
- 517. Trial or hearing; determination and judgment.
- 518. Default; proceedings and judgment thereon.

VIII. ENFORCEMENT OF JUDGMENTS AGAINST FOREIGN SOVEREIGNS.

- 521. In general.
- 522. Attachment, arrest, and execution in general.
- 523. Persons and property subject; immunity and exceptions thereto.

222. INTERPLEADER**VIII. ENFORCEMENT OF JUDGMENTS AGAINST FOREIGN SOVEREIGNS.**(Cont'd)

- 524. — In general.
- 525. — Property in possession of third parties; garnishment.
- 526. — Commercial activity.
- 527. — Terrorism and related activity.
- 528. — Property of foreign central bank or monetary authority.
- 529. — Military property.
- 530. — Waiver of immunity.
- 531. Proceedings.
- 532. — In general.
- 533. — Time for proceedings.
- 534. — Process or other notice.
- 535. — Order of court.
- 536. Postjudgment discovery.

IX. INTERNATIONAL ORGANIZATIONS AND TRIBUNALS.

Construction and operation of treaties concerning international organizations and tribunals, see ¶286.

- 541. In general.
- 542. Privileges and immunities in general.
- 543. — In general.
- 544. — Extent of immunity.
- 545. — Waiver of immunity.
- 546. Particular organizations and tribunals.
- 547. — In general.
- 548. — United Nations.
- 549. — International Court of Justice.
- 550. — International Monetary Fund.
- 551. — World Bank.
- 552. — World Trade Organization.
- 553. — World Health Organization.
- 554. Actions and proceedings by or against organizations and tribunals.

222. INTERPLEADER**SUBJECTS INCLUDED**

Remedies for protection of persons holding property or liable for debts, etc., the right to which is in controversy between others,

by compelling such claimants to litigate their rights between themselves

More particularly bills of interpleader, actions for interpleader, and rules or orders for substitution of one such claimant as defendant in an action brought by the other

Nature and scope of the remedy in general

Grounds of such proceedings and defenses thereto

By and against whom and as to what property, debts, rights, claims, etc., they may be maintained

Procedure therein, judgments and orders therein and operation thereof

Costs in such proceedings

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Interpleader incidental to other remedies, such as sheriff's interpleader, see CREDITORS' REMEDIES and other specific topics

Intervention and substitution of parties in actions in general, see PARTIES

- I. RIGHT TO INTERPLEADER, ¶1-14.
- II. PROCEEDINGS AND RELIEF, ¶15-43.

I. RIGHT TO INTERPLEADER.

- 1. Nature and scope of remedy.
- 1.5. Statutory provisions and remedies.
- 2. Existence of other remedy.
- 3. Property and rights which may be subject of interpleader.
- 4. Actions in which interpleader by substitution of claimant is authorized.
- 5. Grounds of relief.
- 6. — In general.
- 7. — Identity of subject-matter of claims.
- 8. — Nature and grounds of claims.
 - (1). In general.
 - (2). Doubt or dispute as to rights of claimants.
- 9. — Privity of title between claimants.
- 10. — Interest or independent liability of person in possession or debtor.
- 11. — Particular conflicting claims.
- 12. Defenses and grounds of opposition.
- 13. Persons entitled in general.

222. INTERPLEADER**I. RIGHT TO INTERPLEADER.**(Cont'd)

14. Persons who may be compelled to interplead.

II. PROCEEDINGS AND RELIEF.

15. Form of remedy.
16. Remedy in equity or by equitable action in general.
17. Jurisdiction and venue.
18. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
19. Parties.
20. Process and appearance.
21. Deposit or payment into court.
22. Injunction.
23. Bill, complaint, or petition.
24. Cross-bill or answer claiming interpleader.
25. Affidavit negating collusion.
26. Answer or plea and subsequent pleadings.
27. Demurrers and motions.
28. Issues and proof.
29. Evidence.
30. Dismissal before hearing.
31. Trial or hearing.
32. Relief awarded.
33. Judgment or decree, and enforcement thereof.
34. Appeal.
35. Costs and fees.
36. Statutory proceedings for substitution of claimant.
37. — In general.
38. — Time for application.
39. — Parties.
40. — Application, and proceedings thereon.
41. — Hearing and determination.
42. — Order.
43. — Proceedings after substitution.

226H. JOINT VENTURES**SUBJECTS INCLUDED**

Association of two or more persons not otherwise joined in interest, by which they agree

to engage in common enterprise for their mutual benefit

Their rights, duties, and liabilities arising therefrom as between themselves and as to third parties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Coexecutors and similar joint fiduciaries, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS

Conspirators, see CONSPIRACY

Joint contracts and obligations more generally, see CONTRACTS and other specific topics

Joint estates, see PROPERTY IV

Joint estates, see JOINT TENANCY, TENANCY IN COMMON

Joint offenders, see CRIMINAL LAW

Joint wrongdoers, see CONTRIBUTION, TORTS, and other specific topics

Mining ventures, see MINES AND MINERALS III(B)

Partnerships, see PARTNERSHIP

Release of joint debtors, see COMPROMISE, SETTLEMENT, AND RELEASE

I. NATURE, CREATION, REQUISITES, AND EXISTENCE, ¶1–40.

II. RIGHTS, DUTIES, AND LIABILITIES OF PARTIES, ¶41–60.

III. TERMINATION, DISSOLUTION, OR MODIFICATION, ¶61–70.

IV. ACTIONS AND PROCEEDINGS, ¶71–88.

I. NATURE, CREATION, REQUISITES, AND EXISTENCE.

1. In general; essential elements.

2. Joint venture as distinct entity.

3. Joint venture as partnership; applicability of partnership law in general.
See also PARTNERSHIP ¶439.

4. Other forms and relations distinguished.

5. — In general.

6. — Corporations.

See also CORPORATIONS AND BUSINESS ORGANIZATIONS ¶1005.

7. — Limited liability companies.

8. — Joint ownership; tenancies.

9. Contract or agreement in general.

227. JUDGES**I. NATURE, CREATION, REQUISITES,
AND EXISTENCE.**(Cont'd)

10. Purpose or motive.
11. Intent.
12. Contributions of parties.
13. Community of interest.
14. — In general.
15. — In profits and losses.
16. Extent of parties' control.
17. Scope and duration of venture; single or multiple transactions.
18. Form, requisites, and validity of contract.
19. — In general.
20. — Oral or written agreements.
21. — Express or implied agreements.
22. — Consideration.
23. Particular cases and contexts.
24. — In general.
25. — Form, requisites, and validity of contract.
26. — Joint venture created.
27. — Joint venture not created.
28. Joint venture by estoppel.
29. Filing and registration requirements.
30. Name and location.

**II. RIGHTS, DUTIES, AND LIABILITIES
OF PARTIES.**

41. In general.
42. Construction and operation of contracts in general.
43. Particular cases and contexts.
44. — In general.
45. — Property ownership and transactions.
46. — Profits and losses.
47. — Services and compensation.
48. — Advances and expenses; reimbursement.
49. Loyalty, good faith, and fiduciary duties.
50. — In general.
51. — Particular cases and contexts.
52. Rights, duties, and liabilities as to third parties.
53. — In general.
54. — Contracts, debts, and expenses.
55. — Torts.

**III. TERMINATION, DISSOLUTION,
OR MODIFICATION.**

61. In general.
62. Particular cases and contexts.

IV. ACTIONS AND PROCEEDINGS.

71. In general.
72. Time to sue; limitations and laches.
73. Persons entitled to sue; parties; standing.
74. Process.
75. Pleading.
76. Evidence.
77. — In general.
78. — Presumptions, inferences, and burden of proof.
79. — Degree of proof.
80. — Weight and sufficiency.
81. Trial or hearing.
82. — In general.
83. — Questions of law or fact.
84. — Instructions.
85. Verdict, findings, and judgment.
86. Accounting.
87. Damages.
88. Costs and fees.

227. JUDGES**SUBJECTS INCLUDED**

Public officers authorized to preside in the courts and administer law therein, whether designated as judges, justices, chancellors, surrogates, or by other titles

Appointment, qualification, tenure, and removal of such judges

Special, substitute, and de facto judges

Their rights, powers, duties, and liabilities

Disqualification of judges

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Assignment of judges to particular courts or parts of courts, see COURTS, FEDERAL COURTS

227. JUDGES

Commissioners having subordinate judicial powers, see COURT COMMISSIONERS

Courts martial, members of, see MILITARY JUSTICE, MILITIA

Justices of the peace, magistrates, etc., see JUSTICES OF THE PEACE, UNITED STATES MAGISTRATE JUDGES

Masters in chancery, see EQUITY

Referees and auditors having delegated and subordinate judicial powers, see BANKRUPTCY, FEDERAL CIVIL PROCEDURE, REFERENCE

I. APPOINTMENT, QUALIFICATION, AND TENURE, ¶1–12.

II. SPECIAL OR SUBSTITUTE JUDGES, ¶13–19.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES, ¶20–38.

IV. DISQUALIFICATION TO ACT, ¶39–56.

I. APPOINTMENT, QUALIFICATION, AND TENURE.

1. Nature of office.
2. Creation and abolition of office.
3. Appointment or election.
4. Eligibility.
5. Qualification.
6. De facto judges.
7. Term and tenure of office in general.
8. Vacancy in office.
9. Holding over after expiration of term.
10. Resignation and abandonment.
11. Removal or discipline.
 - (1). In general; constitutional and statutory provisions.
 - (2). Standards, canons, or codes of conduct, in general.
 - (3). Jurisdiction or authority to remove or discipline.
 - (4). Grounds and sanctions.
 - (5). Proceedings and review.
 - (5.1). — In general.
 - (6). — Discovery, disclosure, and confidentiality.
 - (7). — Evidence.
 - (8). — Reference and review.
- 11.5. Reinstatement.
12. Title to and possession of office.

II. SPECIAL OR SUBSTITUTE JUDGES.

13. Nature of office.
14. Constitutional and statutory provisions.
15. Necessity and grounds for appointment.
 - (1). In general.
 - (2). Successive appointments.
16. Appointment, qualification, and tenure.
 - (.5). In general.
 - (1). Appointment.
 - (2). Qualification.
17. Evidence of authority.
18. Order or record as to appointment.
19. Objections to authority.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES.

20. Privileges.
21. Disabilities.
22. Compensation and fees.
 - (.5). In general.
 - (1). Right to compensation in general.
 - (2). Constitutional and statutory provisions.
 - (3). From what fund payable.
 - (4). Resolutions and ordinances fixing compensation or making appropriations therefor.
 - (5). Amount.
 - (6). Right to extra compensation.
 - (7). Change in amount during term of office.
 - (8). Compensation of special judge.
 - (9). Deductions for absence or neglect of duty.
 - (10). Allowances for expenses.
 - (11). Compensation on retirement.
 - (12). Accounting for fees.
23. Nature and extent of authority.
24. Judicial powers and functions in general.
25. Authority and proceedings of special or substitute judges.
 - (1). In general.
 - (2). Duration of authority.
26. Validity of acts of de facto judges.
27. Powers and proceedings at chambers or out of court.
28. Powers and proceedings in vacation.
29. Exercise of powers in different courts.

228. JUDGMENT**III. RIGHTS, POWERS, DUTIES,
AND LIABILITIES.(Cont'd)**

30. Exercise of powers beyond territorial limits of jurisdiction.
31. Powers after expiration of term.
32. Powers of successor as to proceedings before former judge.
33. Ministerial functions and acts.
34. Custody of records, property, or funds.
35. Actions in official capacity.
36. Liabilities for official acts.
37. Liabilities on official bonds.
38. Criminal responsibility.

IV. DISQUALIFICATION TO ACT.

39. Nature and effect in general.
40. Constitutional and statutory provisions.
41. Pecuniary interest.
42. — In general.
43. — Stockholder of corporation.
44. — Citizen or taxpayer of municipality.
45. Relationship to party or person interested.
46. Relationship to attorney or counsel.
47. Acting as counsel or other participation in cause.
 - (1). In general.
 - (2). Presiding at former trial relating to same or similar matter.
48. Review by judge of his own decision.
49. Bias and prejudice.
 - (1). In general.
 - (2). Statements and expressions of opinion by judge.
50. Rights and duties of judge as to recusal.
51. Objections to judge, and proceedings thereon.
 - (1). In general.
 - (2). Time of making objection.
 - (3). Sufficiency of objection, affidavit, or motion.
 - (4). Determination of objections.
52. Waiver of disqualification or objections.
53. — In general.
54. — Consent of parties.
55. Removal of disqualification.
56. Effect on acts and proceedings of judge.

228. JUDGMENT**SUBJECTS INCLUDED**

Judicial determinations of rights of parties to proceedings in courts of justice in general, interlocutory as well as final

Rendition, entry, requisites, and validity of formal judgments, more particularly of judgments in civil actions, and amendment and correction thereof

Liens created by entry, docketing, etc., of judgments

Conclusiveness of judgments as against collateral attack

Direct attacks on judgments by motions in arrest or to open, vacate, etc., judgments, writs of error coram nobis, etc.

Actions to set aside or restrain enforcement of judgments or for other relief against them on equitable grounds

Assignment of judgments

Payment, satisfaction, and discharge of judgments

Revival of judgments by scire facias, motion, etc.

Operation and effect of judgments of courts of foreign states and countries

Enforcement of judgments in general, more particularly actions on judgments

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Admiralty decrees and orders, see ADMIRALTY

Bankrupt or insolvency acts, judgments in proceedings under, see BANKRUPTCY, CREDITORS' REMEDIES ⇌1183

Criminal cases, sentences in, see SENTENCING AND PUNISHMENT

Declaratory judgments, see DECLARATORY JUDGMENT

Enforcement of judgments by particular classes of writs or proceedings, see CONTEMPT, CREDITORS' REMEDIES, and other specific topics

Equity decrees and orders, see EQUITY

Federal courts, judgments in, see FEDERAL CIVIL PROCEDURE

Justices of the peace, judgments of, see JUSTICES OF THE PEACE

228. JUDGMENT

Municipal courts and other specialized courts, judgment in, see **COURTS**

Orders incident to proceedings in actions, see **MOTIONS** and other specific topics

Particular forms or causes of action, or proceedings other than actions, judgments in, see **DIVORCE**, **EMINENT DOMAIN**, **INJUNCTION**, **MANDAMUS**, and other specific topics

Particular persons, judgments for or against, see **EXECUTORS AND ADMINISTRATORS**, **INFANTS**, and other specific topics

Pleadings, judgments on, see **PLEADING**

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228. JUDGMENT**I. NATURE AND ESSENTIALS
IN GENERAL.(Cont'd)**

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14. Action or other formal proceeding.
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 - (3). Nonresidents in general.
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 - (5). Nonresident joint defendants.
 - (6). Appearance by attorney.
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- 43.1. — In general.
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 - (3). Nature and extent of relief in general.
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228. JUDGMENT**II. BY CONFESSION.(Cont'd)**

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 - (3). Right to relief in general.
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 - (3). Application and proceedings thereon.
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 - (7). Time of rendering or entering judgment.
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 - (.5). In general.
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II. BY CONFESSION.(Cont'd)

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 - 71.1. — In general.
- 72. — Requisites and sufficiency.
- 73. — Construction and operation.
- 74. Offer of judgment.
 - 74.1. — In general.
- 75. — Actions in which offer is authorized.
- 76. — Parties who may make.
- 77. — Time for making.
- 78. — Requisites and sufficiency.
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- 83. Admission in pleading.
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- 85. — Part of demand.
- 86. Submission on agreed statement of facts.
- 87. Form and requisites of judgment.
- 88. Entry of judgment.
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- 92. Nature of judgment by default.
- 93. Statutory provisions.
- 94. Actions in which judgment by default is authorized.
- 95. Parties who may take judgment by default.
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228. JUDGMENT**IV. BY DEFAULT.(Cont'd)**

- 97. — In general.
- 98. — Codefendants.
- 99. Jurisdiction in general.
- 100. Pleadings to sustain judgment.
- 101. — In general.
 - (1). In general.
 - (2). In particular actions.
 - (3). Filing declaration, petition, or complaint, or cross-petition.
- 102. — Effect of amendment.
- 103. Default of appearance.
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- 105. Default in pleading.
- 105.1. — In general.
- 106. — Failure to plead in general.
 - (1). In general.
 - (2). Time of answering or filing plea, answer, or affidavit of defense.
 - (3). Answering amended pleadings.
 - (4). Answer to part of cause of action.
 - (5). Necessity for filing plea or answer.
 - (6). Necessity for affidavit of defense or of merits.
 - (7). Failure to plead after decision on demurrer or exceptions.
 - (8). Failure to make reply or rejoin-der.
 - (9). Striking out or withdrawal of pleading.
- 107. — Pleading remaining not disposed of.
- 108. — Pendency of motion.
- 109. Absence at trial or other proceeding.
- 110. Operation and effect of default.
- 111. — In general.
- 112. — Matters admitted.
- 113. — Right to notice of and partic-ipation in subsequent proceedings.
- 114. Waiver of default.
- 115. Relief awarded on judgment by default.
- 116. — In general.
- 117. — Conformity to pleadings.
- 118. — Amount of recovery.
- 119. Time for taking default.
- 120. Taking or entry of default.
- 121. Application for judgment.
- 121.1. — In general.
- 122. — Necessity.

IV. BY DEFAULT.(Cont'd)

- 123. — Proceedings in general.
 - (1). In general.
 - (2). Time for taking proceedings.
- 124. Proof of jurisdictional matters.
- 125. Proof of default.
- 126. Proof of cause of action.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 127. Interlocutory judgment.
- 128. Final judgment.
- 129. Form and requisites in general.
- 130. Recitals.
- 131. Entry of judgment in general.
- 132. Premature entry of judgment.
- 133. Defects and objections.
- 134. Construction and operation.

(B) OPENING OR SETTING ASIDE DEFAULT.

- 135. Nature and scope of remedy.
- 136. Statutory provisions.
- 137. Authority of court.
- 138. Right to relief in general.
 - (1). In general.
 - (2). Negligence in suffering default.
 - (3). Want or insufficiency of notice of proceedings.
- 139. Discretion of court.
- 140. Judgments which may be opened or set aside.
- 141. Invalidity of judgment.
- 142. Right to defend after judgment on ser-vice by publication or other construc-tive service.
- 143. Excuses for default.
 - (1). In general.
 - (2). Necessity for excuse.
 - (3). Mistake, surprise, or excusable ne-glect in general.
 - (4). Mistake as to cause of action or defense.
 - (5). Mistake as to time or place of appearance or trial.
 - (6). Mistake as to process.
 - (7). Mistake as to employment of counsel.

228. JUDGMENT**IV. BY DEFAULT.(Cont'd)**

- (8). Advice of sheriff or attorney.
- (9). Conduct of codefendant.
- (10). Mistake or negligence of counsel, in general.
- (11). Mistake or negligence of counsel as to time or place of appearance or trial.
- (12). Negligent failure of counsel to plead.
- (13). Failure of party to reach courthouse in time.
- (14). Absence of party or counsel caused by private or official business.
- (15). Death or disability.
- (16). Ignorance.
- (17). Agreement with or statement of party taking default or his counsel.
- (18). Statement or order of judge or clerk.
- 144. Irregularities or defects in proceedings on default.
- 145. Meritorious cause of action or defense.
 - (1). In general.
 - (2). Necessity for showing meritorious cause of action or defense.
 - (3). Necessity for stating facts constituting defense.
 - (4). Sufficiency of defense.
- 146. Prejudice from judgment.
- 147. Waiver of right to relief.
- 148. Persons entitled to relief.
- 149. Persons as against whom judgment may be opened or set aside.
- 150. Proceedings in cause operating to open default.
- 151. Form and requisites of application in general.
- 153. Time for application.
 - (1). In general.
 - (2). Limitations applicable in general.
 - (3). Notice of entry of judgment.
 - (4). At the same or a subsequent term.
 - (5). After execution or other proceedings for enforcement.
 - (6). Where service is constructive.
- 154. Parties on application.
- 155. Notice of application.

IV. BY DEFAULT.(Cont'd)

- 156. Stay of proceedings on judgment.
- 157. Affidavits on application.
- 157.1. — In general.
- 158. — Necessity.
- 159. — Requisites and sufficiency in general.
- 160. — Affidavit of merits.
- 161. Proposed answer or other pleading.
- 162. Evidence.
 - (.5). In general.
 - (1). Counter affidavits.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency of evidence.
- 163. Hearing and determination.
- 164. Relief awarded in general.
- 165. Opening or setting aside judgment in part.
- 166. Conditions on granting application.
- 167. — In general.
- 168. — Limiting defense.
- 169. — Payment of costs and expenses.
- 170. — Judgment to stand as security.
- 171. — Subsequent proceedings in cause.
- 172. — Performance of conditions.
- 173. Order.
- 174. Operation and effect in general.
- 175. Defenses after opening default.
- 176. Proceedings after opening default.
- 177. Objections and exceptions.

V. ON MOTION OR SUMMARY PROCEEDING.

- 178. Nature of summary judgment.
- 179. Statutory provisions.
- 180. Actions in which summary judgment is authorized.
- 181. Grounds for summary judgment.
 - (1). In general.
 - (2). Absence of issue of fact.
 - (3). Presence of question of law.
 - (4). Necessity that right to judgment be free from doubt.
 - (5). Matters affecting right to judgment.
 - (5.1). — In general.
 - (6). — Existence of defense.

228. JUDGMENT**V. ON MOTION OR SUMMARY
PROCEEDING.(Cont'd)**

- (7). — Bar of statute of limitations.
- (8). — Ambiguity in written instrument.
- (9). — Availability of documentary evidence.
- (10). — Effect of counterclaim.
- (11). — Sufficiency of pleading.
- (12). — Effect of amending pleading.
- (13). — Effect of prior decision.
- (14). Partial summary judgment.
- (15). Particular cases.
- (15.1). — In general.
- (16). — Attorneys, cases involving.
- (17). — Banks, cases involving.
- (18). — Brokers or agents, cases involving.
- (19). — Contract cases in general.
- (20). — Domestic relations.
- (21). — Employees, cases involving.
- (22). — Guaranty cases.
- (23). — Insurance cases.
- (24). — Landlord and tenant cases.
- (25). — Mortgages and secured transactions, cases involving.
- (26). — Negotiable instrument cases.
- (27). — Public officers and employees, cases involving.
- (28). — Replevin cases.
- (29). — Sales cases in general.
- (30). — Specific performance cases.
- (31). — Stock and stockholders, cases involving.
- (32). — Tax cases.
- (33). — Tort cases in general.
- (34). — Trust cases.
- 182. Motion or other application.
- 183. — In general.
- 184. — Notice.
- 185. — Evidence in general.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Documentary evidence or official record.
 - (5). Weight and sufficiency.

**V. ON MOTION OR SUMMARY
PROCEEDING.(Cont'd)**

- (6). Existence or non-existence of fact issue.
- 185.1. — Affidavits, form, requisites and execution of.
 - (1). In general.
 - (2). Persons who may make affidavit.
 - (3). Personal knowledge or belief of affiant.
 - (4). Matters of fact or conclusions.
 - (5). Statement of absence of defense or meritorious actions.
 - (6). Execution of affidavit.
 - (7). Amended or additional affidavits.
 - (8). Defects and objections.
- 185.2. — Use of affidavits.
 - (1). In general.
 - (2). Purpose and function.
 - (3). Showing to be made on supporting affidavit.
 - (4). Showing to be made on opposing affidavit.
 - (5). Sufficiency of affidavit.
 - (6). Construction of affidavits in general.
 - (7). Admission of facts alleged in affidavit.
 - (8). Operation and effect of affidavit.
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- 185.3. — Evidence and affidavits in particular cases.
 - (1). In general.
 - (2). Particular defenses.
 - (3). Accounting and accounts.
 - (4). Attorneys.
 - (5). Banks, corporations and associations.
 - (6). Bonds.
 - (7). Brokers and agents.
 - (8). Contracts.
 - (9). Domestic relations.
 - (10). Guaranty.
 - (11). Injunction.
 - (12). Insurance.
 - (13). Labor and employment.
 - (14). Landlord and tenant.
 - (15). Liens and mortgages.
 - (16). Negotiable instruments.

228. JUDGMENT**V. ON MOTION OR SUMMARY PROCEEDING.(Cont'd)**

- (17). Remedies to determine property rights.
- (18). Sales of real and personal property.
- (19). Specific performance.
- (20). Taxes and assessments.
- (21). Torts.
- 186. — Hearing and determination.
- 187. Form and requisites of judgment.
- 188. Entry of judgment.
- 189. Defects and objections.
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VI. ON TRIAL OF ISSUES.**(A) RENDITION, FORM, AND REQUISITES IN GENERAL.**

- 191. Necessity and nature in general.
- 192. Statutory provisions.
- 193. Power and duty of court in general.
- 194. Determination of all issues.
- 195. Issues on demurrer.
- 196. Issues on plea in abatement.
- 197. Dismissal of action, nonsuit, or direction of verdict.
- 198. Verdict and findings of jury.
- 199. Notwithstanding verdict.
 - (1). In general.
 - (2). Effect of pleadings.
 - (3). Effect of evidence in general.
 - (3.1). Matters admitted by motion.
 - (3.2). Evidence and inferences that may be considered or drawn.
 - (3.3). Credibility of witnesses and weight of evidence.
 - (3.4). Evidence improperly admitted.
 - (3.5). Propriety of judgment in general.
 - (3.6). Where evidence is conflicting or where different inferences may be reasonably drawn therefrom.
 - (3.7). Where there is some substantial evidence to support verdict.
 - (3.8). Where failure of proof may be remedied on new trial.
 - (3.9). Where directed verdict or binding instructions would have been proper.

VI. ON TRIAL OF ISSUES.(Cont'd)

- (3.10). Where there is no evidence to sustain verdict.
- (3.11). Where undisputed facts entitle movant to judgment as matter of law.
- (3.12). Incontrovertible physical facts, effect of.
- (3.13). Insurance policies, actions on.
- (3.14). Miscellaneous actions and proceedings.
- (3.15). Tort actions in general.
- (3.16). Carrier and street railroad cases.
- (3.17). Motor vehicle collision cases.
- (3.18). Railroad crossing cases.
- (3.19). Will contests.
- (4). Verdict subject to question reserved by court.
- (5). Motion for judgment in general.
- (6). Time for motion.
- (7). Party entitled to move.
- (8). Basing motion on records of case.
- 200. Decision on trial by court.
- 201. Report of referee.
- 202. Judgments in causes tried together.
- 203. More than one judgment in same case.
- 204. Nature and extent of relief in general.
- 205. Amount of recovery.
- 206. Personal judgment in proceedings by attachment or in rem.
- 207. Affirmative relief to defendant.
- 208. Relief as between coparties.
- 209. Time for rendition.
- 210. — In general.
- 211. — Pendency of motion for new trial or in arrest.
- 212. — In vacation.
- 213. Application for judgment.
- 214. Allowance of and order for judgment.
- 215. Mode of rendition.
- 216. Interlocutory judgment.
- 217. Final judgment.
- 218. Formal requisites.
- 219. Contents in general.
- 220. Recitals.
- 221. Designation of amount.
- 222. — In general.
- 223. — Interest.

228. JUDGMENT**VI. ON TRIAL OF ISSUES.(Cont'd)**

- 224. — Costs and fees.
- 225. — Medium of payment.
- 226. Designation and description of property.
- 227. Exceptions and saving clauses.
- 228. Alternative provisions.
- 229. Conditions.
- 230. Provisions as to payment and enforcement.
- 231. Surplusage.
- 232. Defects and objections.

(B) PARTIES.

- 233. Determination as to all parties.
- 234. Statutory provisions as to judgment for or against coparties.
- 235. Judgment for one or more coparties.
- 236. Judgment against one or more coparties.
- 237. — In general.
 - (1). In general.
 - (2). Judgment against defendant where codefendant is not served with process.
 - (3). Judgment against defendant where codefendant is in default or is released.
 - (4). Dismissal or nonsuit as to one or more parties.
- 238. — Actions on contract.
- 239. — Actions for tort.
- 240. Joint or several judgment.
- 241. Separate judgments against different parties.
- 242. Judgment for or against party deceased.
- 243. Judgment for or against person not a party.
- 244. Designation of parties.
- 245. Defects and objections.

(C) CONFORMITY TO PROCESS, PLEADINGS, PROOFS, AND VERDICT OR FINDINGS.

- 246. Conformity to process.
- 247. Conformity to pleadings and proofs.
- 248. — In general.
- 249. — Nature and form of remedy.
- 250. — Grounds of action or defense.
- 251. — Issues raised by pleadings.
 - (1). In general.
 - (2). Judgment for defendant or intervenor.

VI. ON TRIAL OF ISSUES.(Cont'd)

- (3). Withdrawal, or abandonment of, or failure to establish issue.
- 252. — Prayer for relief in general.
 - (1). In general.
 - (2). Effect of answer or reply or absence thereof.
 - (3). Relief as to particular parties.
 - (4). Alternative relief in general.
 - (5). General prayer.
- 253. — Amount demanded.
 - (1). In general.
 - (2). Interest, costs, and expenses of suit.
 - (3). Installments accruing after commencement of action.
 - (4). Set-off or counterclaim.
- 254. — Medium of payment.
- 255. — Facts and evidence.
- 256. Conformity to verdict and findings.
 - (1). In general.
 - (2). Special verdict and findings.
 - (3). Rejection of part of verdict as surplusage.
 - (4). Joint or several judgment.
 - (5). Parties for or against whom judgment may be rendered.
 - (6). Amount.
 - (7). Interest, costs, and attorney fees.
- 257. Conformity to report of referee.
- 258. Objections on ground of variance.

(D) ARREST OF JUDGMENT.

- 259. Grounds in general.
- 260. Misjoinder of causes of action.
- 261. Objections to jurisdiction.
- 262. Defects and objections as to parties.
- 263. Defects in pleadings.
 - (1). In general.
 - (2). Formal defects.
 - (3). Defects available on demurrer.
 - (4). Defects available after demurrer overruled.
 - (5). One or more defective counts, allegations, or causes of action.
 - (6). Amendable defects.
 - (7). Waiver of defects in general.
 - (8). Defects cured by verdict or findings.

228. JUDGMENT**VI. ON TRIAL OF ISSUES.(Cont'd)**

- (9). Variance between pleading and writ.
- (10). Variance between pleading and proof.
- 264. Objections to jury.
- 265. Defects in and objections to verdict or findings.
- 266. Matter not apparent of record in general.
- 267. Motions in arrest.
- 268. Order for arrest.
- 269. Operation and effect of arrest.

VII. ENTRY, RECORD, AND DOCKETING.

- 270. Necessity for entry.
- 271. Authority to enter.
- 272. Time for entry in general.
- 273. Entry nunc pro tunc.
 - (1). In general.
 - (2). Failure to enter judgment at time of rendition.
 - (3). Errors or irregularities in previous entry.
 - (4). Existence of previous judgment or order.
 - (5). Death of party before final judgment or before entry thereof.
 - (6). Time of entry nunc pro tunc.
 - (7). Effect of entry nunc pro tunc.
 - (8). Proceedings for entry nunc pro tunc.
- 274. Parties who may enter.
- 275. Stay of proceedings.
- 276. Proceedings for entry.
- 277. Judgment roll or record.
- 277.1. — In general.
- 278. — Form and requisites in general.
- 279. — Matters included.
- 280. — Making and filing.
- 281. — Date.
- 282. — Signature.
- 283. — Re-entry or restoration of lost or destroyed judgment.
- 284. Judgment book or docket.
- 285. Index to record.
- 286. Defects and objections.
- 287. Effect of entry and record as between parties in general.

VII. ENTRY, RECORD, AND DOCKETING.(Cont'd)

- 288. Record as notice.
- 289. Conflict in record.
- 290. Filing transcript in other court.
- 291. Filing transcript of justice's judgment in court of record.
- 292. Filing transcript in other county or district.
- 293. Effect of failure to enter judgment or file transcript.

VIII. AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT.

- 294. Nature and scope of remedy.
- 295. Statutory provisions.
- 296. Authority of court, judge, or judicial officer.
- 297. — In general.
- 298. — During same term.
- 299. — After the term.
 - (1). In general.
 - (2). At chambers or in vacation.
 - (3). Effect of motion for rehearing during term.
 - (4). Submission of parties to jurisdiction of court.
- 300. Discretion of court.
- 301. Judgments which may be amended or corrected.
- 302. Nature of errors or defects.
- 303. — In general.
- 304. — Judicial errors.
- 305. — Provisions of judgment not conforming to decision or verdict.
- 306. — Clerical errors.
- 307. — Omissions.
- 308. Formal requisites.
- 309. Recitals in general.
- 310. Parties.
- 311. Process, service, and appearance.
- 312. Pleadings and other proceedings.
- 313. Relief awarded in general.
- 314. Amount of recovery.
- 315. Source of amendment or correction.
- 316. Amendment or correction on court's own motion.
- 317. Persons entitled to apply.
- 318. Persons as against whom judgment may be amended.

228. JUDGMENT**VIII. AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT.(Cont'd)**

- 319. Form and requisites of application in general.
- 320. Jurisdiction of application.
- 321. Time for application.
- 322. Parties on application.
- 323. Notice of application.
- 324. Affidavits and other evidence.
- 325. Hearing and determination.
- 326. Allowing amendment nunc pro tunc.
- 327. Conditions on allowing amendment.
- 328. Order.
- 329. Mode of making amendment or correction.
- 330. Operation and effect.
- 331. — In general.
- 332. — As to third persons.
- 333. Objections and exceptions.
- 334. Writ of error coram nobis.
- 335. Actions and other proceedings to review judgment.
 - (1). In general.
 - (2). Grounds for review.
 - (3). Pleading and evidence.
 - (4). Hearing, determination, and relief.

IX. OPENING OR VACATING.

- 336. Nature and scope of remedy.
- 337. Statutory provisions.
- 338. Existence of or resort to other remedy.
- 339. Authority of court.
- 340. — In general.
- 341. — During same term.
- 342. — After the term.
 - (1). In general.
 - (2). At subsequent term.
 - (3). Necessity and effect of motion during the term.
 - (4). In vacation, at chambers, or adjourned term.
 - (5). Stipulation or agreement of parties.
- 343. Right to relief in general.
- 344. Discretion of court.
- 345. Judgments which may be opened or vacated.
- 346. Invalidity of judgment in general.

IX. OPENING OR VACATING.(Cont'd)

- 347. Insufficiency or illegality of cause of action.
- 348. Want of jurisdiction.
- 349. — In general.
- 350. — Want of or defects in process, service, or notice.
- 351. — Falsity of return or proof of service.
- 352. — Unauthorized appearance.
- 353. Errors and irregularities.
- 354. — In general.
- 355. — Errors of law.
- 356. — Errors of fact.
- 357. — Defects and objections as to parties.
- 358. — Defects and objections as to pleadings.
- 359. — Irregularities in proceedings before judgment.
- 360. — Irregularities in entry of judgment.
- 361. — Judgment unauthorized or contrary to agreement.
- 362. Mistake, inadvertence, surprise, excusable neglect, casualty, or misfortune.
- 363. — In general.
- 364. — Mistake of party or counsel.
- 365. — Absence of party.
- 366. — Absence of counsel.
- 367. — Negligence of party.
- 368. — Negligence of counsel.
- 369. — Absence of witness or evidence.
- 370. — Surprise.
- 371. — Disability of party.
- 372. Misconduct of party or counsel.
- 373. — In general.
- 374. — Collusion.
- 375. — Fraud in preventing defense or procuring judgment.
- 376. — Perjury or false testimony.
- 377. Matters available and questions presented before judgment.
- 378. Newly discovered evidence.
- 379. Meritorious cause of action or defense.
 - (.5). In general.
 - (1). Necessity.
 - (2). Nature and sufficiency.
- 380. Waiver of right to relief.

228. JUDGMENT**IX. OPENING OR VACATING.(Cont'd)**

- 381. Vacating judgment on court's own motion.
- 382. Persons entitled to relief.
- 383. Persons as against whom judgment may be vacated.
- 384. Form and requisites of application in general.
- 385. Jurisdiction of application.
- 386. Time for application.
 - (1). In general.
 - (2). Laches in general.
 - (3). Invalid or unauthorized judgments.
 - (4). Objections to jurisdiction or process.
 - (5). Objections based on irregularities.
 - (6). Judgments through mistake, surprise, neglect, or other misfortune.
 - (7). Fraudulent judgments.
 - (8). Commencement of proceedings.
- 387. Parties on application.
- 388. Notice of application.
- 389. Affidavits on application.
- 390. — In general.
- 391. — Affidavit of merits.
- 392. Evidence.
 - (.5). In general.
 - (1). Counter affidavits.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency of evidence.
 - (4.1). — In general.
 - (5). — Want of jurisdiction.
 - (6). — Mistake, inadvertence, surprise, excusable neglect, casualty, or misfortune.
 - (7). — Fraud, perjury, collusion, or other misconduct.
 - (8). — Meritorious cause of action or defense.
- 393. Hearing and determination.
- 394. Relief awarded in general.
- 395. Opening or vacating judgment in part.
- 396. Conditions on opening or vacating judgment.
- 397. Order.

IX. OPENING OR VACATING.(Cont'd)

- 398. Operation and effect.
- 399. — In general.
- 400. — As to third persons.
- 401. Restitution.
- 402. Liabilities on bonds given in proceedings to vacate.

X. EQUITABLE RELIEF.**(A) NATURE OF REMEDY AND GROUNDS.**

- 403. Nature and scope of remedy in general.
- 404. Statutory provisions.
- 405. Right to relief in general.
- 406. Discretion of court.
- 407. Existence of or resort to other remedy.
 - (1). In general.
 - (2). Review in same court.
 - (3). New trial.
 - (4). Appeal, error, or certiorari.
 - (5). Loss of legal remedy.
 - (6). Excuse for failure to assert legal remedy.
- 408. Inadequacy of remedy at law.
- 409. Judgments against which relief may be had.
- 410. — In general.
- 411. — Judgments by confession or on consent or offer.
- 412. — Judgments by default.
- 413. — Satisfaction or discharge of judgment.
- 414. Equitable nature of grounds for relief.
- 415. Invalidity of judgment in general.
- 416. Insufficiency or illegality of cause of action.
- 417. Want of jurisdiction.
- 418. — In general.
- 419. — Want of or defects in process, service, or notice.
- 420. — Falsity of return or proof of service.
- 421. — Unauthorized appearance.
- 422. Errors and irregularities.
- 423. — In general.
- 424. — Defects and objections as to parties.
- 425. — Defects and objections as to pleadings.
- 426. — Irregularities in proceedings.

228. JUDGMENT**X. EQUITABLE RELIEF.(Cont'd)**

- 427. — Judgment unauthorized or contrary to agreement.
- 428. Defenses not interposed in former action.
- 429. — In general.
- 430. — Equitable defenses.
- 431. Excuses for failure to interpose defenses.
- 432. — In general.
- 433. — Ignorance of facts.
- 434. — Necessity of discovery.
- 435. — Mistake, surprise, or accident.
- 436. — Negligence of party.
- 437. — Negligence of counsel.
- 438. — Death or disability of party.
- 439. Compelling set-off or reduction of damages.
- 440. Misconduct of party or counsel.
- 441. — In general.
- 442. — Collusion.
- 443. — Fraud.
 - (.5). In general.
 - (1). Procuring judgment in general.
 - (2). Fraud of counsel.
 - (3). Preventing defense.
- 444. — Perjury or false testimony.
- 445. Questions presented in original action.
- 446. Newly discovered evidence.
- 447. Meritorious cause of action or defense.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Nature of defense in general.
 - (3). Limitations.
- 448. Waiver of right to relief.
- 449. Conditions precedent.
- 450. Leave to sue.
- 451. Defenses.
- 452. Persons entitled to relief.
- 453. Persons as against whom relief may be granted.

(B) JURISDICTION AND PROCEEDINGS.

- 454. Form of remedy.
- 455. Jurisdiction and venue.
- 456. Limitations and laches.
 - (1). In general.
 - (2). Limitations applicable.
 - (3). Computation of period.
- 457. Parties.

X. EQUITABLE RELIEF.(Cont'd)

- 458. Process and appearance.
- 459. Preliminary or temporary injunction.
- 460. Pleading.
 - (.5). In general.
 - (1). Bill, complaint, or petition in general.
 - (2). Certainty of allegation in general.
 - (3). Averments as to diligence and excuse for failure in former action.
 - (4). Averments as to fraud or perjury.
 - (5). Averments as to new matter.
 - (6). Averments of defense or injustice of judgment.
 - (7). Exhibits and copies of instruments and records.
 - (8). Verification.
 - (9). Answer or cross-complaint.
 - (10). Issues, proof, and variance.
 - (11). Motion or demurrer.
- 461. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Sufficiency as to want of jurisdiction.
 - (5). Sufficiency as to fraud, perjury, collusion, or other misconduct.
- 462. Dismissal before hearing.
- 463. Trial or hearing.
- 464. Relief awarded.
- 465. Conditions on granting relief.
- 466. Judgment or decree, and enforcement thereof.
- 467. Appeal.
- 468. Costs.
- 469. Operation and effect of injunction.

XI. COLLATERAL ATTACK.**(A) JUDGMENTS IMPEACHABLE COLLATERALLY.**

- 470. Judgments presumed valid in general.
- 471. Courts or other tribunals rendering judgment.
- 472. — In general.
- 473. — Exclusive jurisdiction.

228. JUDGMENT**XI. COLLATERAL ATTACK.(Cont'd)**

- 474. — Special, limited, or inferior jurisdiction.
- 475. — Probate jurisdiction.
- 476. — Criminal jurisdiction.
- 477. — Special tribunals, boards, and officers exercising judicial functions.
- 478. Nature of subject-matter.
- 479. Nature of action or other proceeding.
- 480. Nature, rendition, and form of judgment in general.
- 481. Judgment by confession or on consent or offer.
- 482. Judgment by default.
- 483. Judgment on motion or summary proceeding.
- 484. Judgment on trial of issues.
- 485. Judgment void on its face in general.

(B) GROUNDS.

- 486. Invalidity of judgment in general.
 - (1). In general.
 - (2). Entry of judgment after death or dissolution of party.
- 487. Insufficiency or illegality of cause of action.
- 488. Want of jurisdiction.
- 489. — In general.
- 490. — Want of or defects in process, service, or notice.
 - (.5). In general.
 - (1). Want of process, service, or notice.
 - (2). Defects in process, service, or notice.
 - (3). Service by publication.
- 491. — Defects in return or proof of service.
- 492. — Unauthorized appearance.
- 493. — Right of parties or privies to impeach judgment.
- 494. — Right of third persons to impeach judgment.
- 495. — Presumptions as to superior or general jurisdiction.
 - (1). In general.
 - (2). Presumptions as to process or notice and service.
- 496. — Presumptions as to special, limited, or inferior jurisdiction.

XI. COLLATERAL ATTACK.(Cont'd)

- 497. — Effect of judgment record or recitals therein.
 - (1). In general.
 - (2). Recitals as to notice or appearance.
 - (3). Recitals as to service by publication.
- 498. — Effect of decision by court as to its own jurisdiction.
- 499. — Extrinsic evidence as to jurisdictional facts.
- 500. Errors and irregularities.
- 501. — In general.
- 502. — Defects and objections as to parties.
- 503. — Defects and objections as to pleadings.
- 504. — Irregularities in proceedings.
 - (1). In general.
 - (2). Error in proceedings at trial.
 - (3). Defects in entry, form, and contents of judgment.
 - (4). Defects in entry of judgment by confession or consent.
- 505. — Judgment, unauthorized or contrary to agreement.
- 506. — Right of parties or privies to impeach judgment.
- 507. — Right of third persons to impeach judgment.
- 508. Misconduct of party or counsel.
- 509. — In general.
- 510. — Collusion as against party.
- 511. — Fraud in preventing defense or procuring judgment.
- 512. — Perjury or false testimony.
- 513. — Fraud or collusion as against creditors.
- 514. — Right of parties or privies to impeach judgment.
- 515. — Right of third persons in general to impeach judgment.
- 516. — Right of creditors to impeach judgment.
- 517. Matters available or questions presented in original action.

228. JUDGMENT**(C) PROCEEDINGS.**

- 518. Collateral nature of proceeding in general.
- 519. Proceedings to enforce judgment.
- 520. Proceedings to revive judgment.
- 521. Proceedings to prevent enforcement of judgment.
- 522. Actions against parties.
- 523. Actions against ministerial officers.

XII. CONSTRUCTION AND OPERATION IN GENERAL.

- 524. Application of general rules of construction.
- 525. Recitals.
- 526. Construction with reference to pleadings or other proceedings.
- 527. Construction with reference to decision or findings.
- 528. Judgment in personam or in rem.
- 529. Parties liable.
- 530. — In general.
- 531. — Particular capacity.
- 532. — Joint or several liability.
- 533. Subject-matter.
- 534. Amount.
- 535. — In general.
- 536. — Interest.
- 537. — Medium of payment.
- 538. Time of taking effect.
- 539. Conditions.
- 539.5. Acceptance by prevailing party of part of judgment.

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES (OBSOLETE, SEE RES JUDICATA).**XIV. CONCLUSIVENESS OF ADJUDICATION (OBSOLETE, SEE RES JUDICATA).****XV. LIEN.**

- 752. Nature of lien.
- 753. Statutory provisions.
- 754. Creation and existence of lien in general.
- 755. Court or other tribunal rendering judgment.
- 756. — In general.
- 757. — Special, limited, or inferior jurisdiction.
- 760. — United States courts.

XV. LIEN.(Cont'd)

- 761. Judgments which create liens.
- 762. — In general.
- 763. — Interlocutory judgments.
- 764. — Decrees in equity.
- 766. Recording and docketing judgment.
- 766.1. — In general.
- 767. — Sufficiency to create lien in general.
- 768. — Transcript or abstract.
 - (1). In general.
 - (2). Transcript from justice court.
- 769. — Index.
- 770. Issuance and record of execution.
- 771. Commencement of lien.
- 772. — In general.
- 773. — Relation back.
- 774. — Judgment nunc pro tunc.
- 775. Property or interest affected and extent of lien.
- 776. — In general.
- 777. — Nature of property.
- 778. — Situation of property.
- 779. — Title of judgment debtor.
 - (1). In general.
 - (2). Property previously transferred.
- 780. — Estate or interest of judgment debtor.
 - (1). In general.
 - (2). Equitable interests in general.
 - (3). Interests of parties to contract of sale.
 - (4). Equities of redemption and surplus proceeds of sale.
 - (5). Trust estates and naked legal title.
 - (6). Remainders and reversions.
 - (7). Property acquired by descent or devise.
- 781. — Property fraudulently conveyed.
- 782. — After-acquired property or title.
- 784. Priorities between judgments.
- 785. Priorities between judgment and other liens or claims.
 - (1). In general.
 - (2). Notice of prior liens or claims.
- 786. Priorities between judgment and conveyances.
- 787. — In general.
- 788. — Prior deed not recorded.

228. JUDGMENT**XV. LIEN.(Cont'd)**

- (1). In general.
- (2). Effect of possession or notice.
- 789. Postponement of lien.
- 790. — In general.
- 791. — Sale under junior judgment.
- 792. Proceedings for determination of priority.
- 793. Transfers of property subject to lien.
 - (1). In general.
 - (2). Notice of judgment lien.
 - (3). Subjection of vendor's remaining property.
 - (4). Successive transfers of different tracts.
 - (5). Proceedings to enforce lien.
- 794. Duration of lien.
- 795. — In general.
 - (1). In general.
 - (2). As against junior judgments.
 - (3). Continuance by issuance and levy of execution or garnishment.
 - (4). Continuance by revival of judgment.
 - (5). Continuance by action on judgment.
 - (6). Continuance by suit to enforce judgment or reach debtor's property.
 - (7). Continuance by matters preventing enforcement.
- 796. — As against bona fide purchasers.
- 797. — As against judgment debtor.
- 798. — Effect of death of judgment debtor.
- 799. Suspension of lien.
- 800. Release, discharge, or extinguishment of lien.
 - (1). In general.
 - (2). Release of other property or security.
 - (3). Effect of division of state.
 - (4). Failure to issue, levy, or return execution or defects therein.
 - (5). Judicial sale of property.
 - (6). Proceedings in partition.
 - (7). Effect of appeal.
 - (8). Death of debtor.
- 801. Foreclosure of lien.

XV. LIEN.(Cont'd)

- 802. Rights and remedies of creditor after termination of lien.

XVI. JUDGMENTS IN REM.

- 803. Nature of adjudication.
- 804. — In general.
- 805. — Judgments quasi in rem.
- 806. Authority of court or other tribunal.
- 807. Jurisdiction of subject-matter.
- 808. Rendition, form, and requisites.
- 809. Entry and record.
- 812. Operation and effect in general.

XVII. FOREIGN JUDGMENTS.

- 813. Grounds of recognition in general.
- 814. Judgments of state courts.
- 814.1. — In general.
- 815. — Adjudications operative in other states; full faith and credit.
- 816. — Constitutional and statutory provisions.
- 817. — Nature and sufficiency of cause of action.
- 818. — Want of jurisdiction.
 - (1). In general.
 - (2). Sufficiency of notice, service of process, or appearance.
 - (3). Effect of want of jurisdiction.
 - (4). Presumptions as to jurisdiction.
 - (5). Conclusiveness of recitals in judgment record.
 - (6). Impeachment for want of jurisdiction.
 - (7). Admissibility of extrinsic evidence as to jurisdiction.
- 819. — Errors and irregularities.
- 820. — Fraud, perjury, collusion, and other misconduct.
- 821. — Merger and bar of causes of action.
- 822. — Conclusiveness of adjudication.
 - (1). In general.
 - (2). Persons concluded.
 - (3). Matters concluded.
 - (4). Extraterritorial effect on real estate.
- 823. — Enforcement in other states.
- 824. — Judgments in attachment.

228. JUDGMENT**XVII. FOREIGN JUDGMENTS.(Cont'd)**

- 825. — Judgments in rem.
- 826. — Judgments in exercise of special, limited, or inferior jurisdiction.
- 827. — Judgments in summary proceedings.
- 828. Effect of judgments of state courts in United States courts.
- 828.1. — In general.
- 828.2. — Questioning jurisdiction.
- 828.3. — Operation and effect in general.
- 828.4. — Full faith and credit.
 - (1). In general.
 - (2). Particular matters.
- 828.5. — Collateral attack.
 - (1). In general.
 - (2). What constitutes.
 - (3). Validity of judgment in general.
 - (4). Errors and irregularities.
 - (5). Fraud and duress.
- 828.6. — Conclusiveness in general.
- 828.7. — Nature of state tribunal.
- 828.8. — Nature of state tribunal's proceedings.
- 828.9. — Nature of judgment.
 - (1). In general.
 - (2). Consent or default.
 - (3). Decision on merits.
 - (4). Decision on pleadings.
 - (5). Dismissal and nonsuit.
 - (6). Finality.
 - (7). Reviewing court's determination.
- 828.10. — Time; condition of cause.
 - (1). In general.
 - (2). Pendency of action or proceeding for review.
- 828.11. — Validity of judgment.
 - (1). In general.
 - (2). Errors and irregularities in general.
 - (3). Contravention of federal constitution or laws.
 - (4). Evidence and fact questions.
- 828.12. — Identity of parties and issues in general.
- 828.13. — Persons who may assert conclusiveness.
- 828.14. — Persons concluded.
 - (1). In general.

XVII. FOREIGN JUDGMENTS.(Cont'd)

- (2). Automobile cases, parties and insurers.
- (3). Corporations, other artificial persons and their members, officers or receivers.
- (4). Decedents and persons interested in their estates.
- (5). Insurance policy holders.
- (6). Participation in state court proceedings.
- (7). Persons not parties or privies.
- (8). Represented parties; class actions.
- (9). Sureties; persons secondarily liable.
- (10). United States; governmental bodies and officers.
- (11). — In general.
- (12). — Tax authorities.
- 828.15. — Identity of cause of action or relief sought.
 - (1). In general.
 - (2). Splitting cause of action or defense.
- 828.16. — Issues or questions presented.
 - (1). In general.
 - (2). Matters unnecessary to decision.
 - (3). Matters which might have been determined.
 - (4). Matters which were not or could not have been adjudicated.
- 828.17. — Determination of issues involved and effect of judgment.
 - (1). In general.
 - (2). Effect of pleadings.
 - (3). Effect of evidence or fact findings.
 - (4). Effect of opinion.
- 828.18. — Estoppel to attack or rely on judgment.
- 828.19. — Relief against judgment.
- 828.20. — Particular matters and issues.
 - (1). In general.
 - (2). Patents, copyrights and trademarks.
 - (3). Property rights.
- 828.21. — Particular federal proceedings.
 - (1). In general.
 - (2). Bankruptcy.
 - (3). Tax proceedings.

228. JUDGMENT**XVII. FOREIGN JUDGMENTS.(Cont'd)**

- 828.22. — Pleading, evidence and enforcement.
- 829. Effect of judgments of United States courts in state courts.
 - (.5). In general.
 - (1). Adjudications of federal courts operative in state courts.
 - (2). Questioning jurisdiction.
 - (3). Operation and effect.
 - (4). Pleading.
- 830. Judgments of courts of foreign countries.
- 830.1. — In general.
- 831. — In personam.
- 832. — In rem.
- 832.5. Judgments of tribal courts.
- 832.7. Effect of foreign judgments on tribal courts.

XVIII. ASSIGNMENT.

- 833. Assignability in general.
- 834. Statutory provisions.
- 835. Judgments assignable.
- 836. Persons who may assign or purchase.
- 837. Agreements to assign future judgments.
- 838. Partial assignment.
- 839. Mode and sufficiency of assignment in general.
- 840. Entry or record of assignment.
- 841. Consideration and validity.
- 842. Setting aside assignment.
- 843. Equitable assignment.
- 844. Operation and effect of transfer in general.
- 845. Priorities.
- 846. Rights and liabilities of parties.
- 846.1. — In general.
- 847. — As to judgment debtor in general.
- 848. — As affected by notice to judgment debtor of assignment.
- 849. — As to each other.
- 850. — As to third persons.

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL.

- 851. Judgments enforceable in general.
- 852. Suspension or stay of proceedings.
 - (1). In general.
 - (2). Security.

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL.(Cont'd)

- 853. Dormant judgments.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Necessity for and issuance of execution.
 - (4). Return or entry of execution.
 - (5). Acknowledgment or agreement between parties.
- 854. Proceedings to enforce judgment.
- 855. — In general.
- 856. — Scire facias.
- 857. Necessity for revival.
- 858. — In general.
- 859. — Dormant judgments.
- 860. — Death of party.
- 861. Judgments which may be revived.
- 862. Grounds for revival.
- 863. Defenses or grounds for opposition to revival.
- 864. Persons who may revive judgment.
 - (1). In general.
 - (2). Assignees.
- 865. Persons against whom judgment may be revived.
- 866. Jurisdiction and venue.
- 866.1. Time for revival; limitations.
- 867. Proceedings in cause operating as revival.
- 868. Proceedings to revive judgment in general.
 - (1). In general.
 - (2). Notice of proceedings.
- 869. Motions to revive judgment.
- 870. Scire facias to revive judgment.
 - (1). In general.
 - (2). Requisites and validity of writ.
 - (4). Parties defendant.
 - (5). Service and return.
 - (6). Pleading.
 - (7). Evidence and trial.
 - (8). Judgment and relief awarded.
 - (9). Amendment of writ.
 - (10). Defects, objections, and waiver.
- 871. Actions to revive judgment.
- 872. Operation and effect of revival.

228. JUDGMENT**XX. PAYMENT, SATISFACTION, MERGER,
AND DISCHARGE.**

- 874. Persons to whom payment may be made.
 - (1). In general.
 - (2). Clerk of court.
- 875. Mode and sufficiency of payment.
- 876. Presumption of payment from lapse of time.
 - (1). In general.
 - (2). Evidence to rebut presumption.
- 877. Evidence as to payment.
- 878. Payment by one or more jointly liable.
 - (1). In general.
 - (2). Assignment of judgment.
- 879. Payment by and assignment to surety.
- 880. Payment by person other than party.
- 881. Performance of specific acts required by judgment.
- 882. Tender.
- 883. Set-off of judgments.
 - (1). In general.
 - (2). Persons entitled to set-off.
 - (3). Judgments subject to set-off.
 - (4). Effect of appeal on right to set-off.
 - (5). Set-off of judgments of different courts.
 - (6). Set-off of judgments between different parties.
 - (7). Set-off of costs or judgments therefor and effect of lien.
 - (8). Effect of delay and waiver or estoppel.
 - (9). Assigned judgment as set-off.
 - (10). Set-off against assigned judgment.
 - (11). Actions and other proceedings to compel set-off.
 - (12). Set-off of judgment against claim.
 - (13). Set-off of claim against judgment.
 - (14). Operation and effect.
- 884. Merger of judgments.
- 885. Assignment to or for judgment debtor as extinguishment.
- 886. Release.
- 887. — In general.
- 888. — Of one or more jointly liable.
- 889. Agreements to satisfy judgment.

**XX. PAYMENT, SATISFACTION, MERGER,
AND DISCHARGE.(Cont'd)**

- 890. Satisfaction by execution or enforcement.
 - (1). In general.
 - (2). Deficiency.
- 891. Satisfaction of one or more judgments for same cause of action.
- 892. Operation and effect of satisfaction.
- 893. Determination of right to proceeds.
- 894. Proceedings to compel satisfaction of record.
- 895. Entry of credits on partial satisfaction.
- 896. Damages and penalties for failure to enter satisfaction.
- 897. Entry of satisfaction of record.
- 898. Vacating entry of satisfaction.
 - (1). In general.
 - (2). Satisfaction unauthorized or obtained through fraud or mistake.
 - (3). Void or irregular sale.
 - (4). Proceedings.
- 899. Effect of entry of satisfaction.

XXI. ACTIONS ON JUDGMENTS.**(A) DOMESTIC JUDGMENTS.**

- 900. Judgment as cause of action in general.
- 901. Statutory provisions.
- 902. Nature and form of remedy.
- 903. Judgments on which action may be brought.
- 904. Conditions precedent.
- 905. Leave to sue.
- 906. Defenses.
- 907. Persons entitled to sue.
- 908. Persons against whom action may be brought.
- 909. Jurisdiction and venue.
- 910. Time to sue and limitations.
 - (1). In general.
 - (2). Adjudications within statute.
 - (3). Accrual of cause of action.
 - (4). Circumstances tolling statute.
 - (5). Justice's judgment docketed in court of record.
- 911. Parties.
- 912. Pleading.
- 912.1. — In general.

228. JUDGMENT**XXI. ACTIONS ON JUDGMENTS.(Cont'd)**

- 913. — Declaration, complaint, or petition.
- 914. — Plea or answer, and subsequent pleadings.
- 915. — Amendment, motions, and demurrer.
- 916. — Issues, proof, and variance.
- 917. Evidence.
- 917.1. — In general.
- 918. — Presumptions and burden of proof.
- 919. — Admissibility.
- 920. — Weight and sufficiency.
- 921. Trial.
- 922. Judgment, and enforcement thereof.
- 923. Appeal and error.
- 924. Costs.

(B) FOREIGN JUDGMENTS.

- 925. Foreign judgment as cause of action in general.
- 926. Statutory provisions.
- 927. Nature and form of remedy.
- 928. What law governs.
- 929. Judgments on which action may be brought.
- 930. Defenses.
- 931. Persons entitled to sue.
- 932. Persons against whom action may be brought.
- 933. Jurisdiction and venue.
- 934. Time to sue and limitations.
 - (1). In general.
 - (2). Constitutionality of statutes.
- 935. Parties.
- 936. Process and appearance.
- 937. Pleading.
- 937.1. — In general.
- 938. — Declaration, complaint, or petition.
- 939. — Plea or answer, and subsequent pleadings.
- 940. — Issues, proof, and variance.
- 941. Evidence.
- 941.1. — In general.
- 942. — Presumptions and burden of proof.
- 943. — Admissibility.
- 944. — Weight and sufficiency.
- 945. Trial.
- 946. Judgment, and enforcement thereof.
- 947. Appeal and error.

XXII. PLEADING JUDGMENT.

- 948. In general.
- 949. Allegations, admissions, and denials.
- 950. Relation between pleadings and proof; variance.

XXIII. EVIDENCE OF JUDGMENT.

- 951. In general.
- 952. Judgment as evidence though not pleaded.
- 957. Evidence to impeach judgment.
- 958. Trial.
 - (1). In general.
 - (2). Questions for jury.

229. JUDICIAL SALES**SUBJECTS INCLUDED**

Sales under orders or judgments of courts in general
 Manner, conduct, validity and effect of such sales
 Confirming or vacating, setting aside, etc., the sale, and resale
 Conveyances to purchasers, and title, rights and liabilities of purchasers at such sales
 Redemption therefrom

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Execution sale or sheriff's sale, see CREDITORS' REMEDIES
 Indian property, see INDIANS ⇌ 200
 Particular classes of proceedings or writs, judicial sales in or under, see CREDITORS' REMEDIES, MORTGAGES AND DEEDS OF TRUST, PARTITION, TAXATION, and other specific topics
 Particular persons in fiduciary capacity, sales under court order or court supervision, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, RECEIVERS and other specific topics

- 1. Nature and essentials in general.
- 2. Statutory provisions.

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3. Judgment, order, or decree.
4. Appointment and qualification of officer.
5. Levy on and custody of property.
6. Appraisal.
7. Authority and powers in making sale in general.
8. Mode of sale.
9. Place.
10. Time.
11. Notice.
12. Postponement.
13. Sale in parcels.
14. Order of offering for sale.
15. Conduct in general.
16. Terms and conditions.
17. Persons who may purchase.
18. Bids.
19. — In general.
20. — Acceptance or rejection.
21. Payment of bid.
22. — In general.
23. — Purchase by creditor.
24. Failure to comply with bid.
25. — In general.
26. — Resale.
27. — Liabilities of bidders.
 - (.5). In general.
 - (1). Title which purchaser may be required to take.
 - (2). Loss on resale and taxes and expenses paid.
28. — Summary proceedings to compel payment.
29. — Actions on bids.
30. Report or return.
31. Confirmation.
 - (1). In general.
 - (2). Proceedings for confirmation and objections thereto.
 - (3). Operation and effect.
32. Persons who may question validity.
33. Ratification of invalid sale.
- 33.5. Curative statutes.
34. Opening or vacating.
- 34.1. — In general.
35. — Grounds in general.
36. — Defects or irregularities in judgment, decree, or order.

37. — Irregularities or misconduct affecting sale.
38. — Mistake, surprise, or accident.
39. — Inadequacy of price.
40. — Inadequacy of price in connection with other objections.
41. — Advance on bid.
42. — Application, and proceedings thereon.
43. — Hearing and determination.
44. — Security or other conditions.
45. Actions to set aside.
46. Resale on setting aside.
47. Collateral attack.
48. Operation and effect in general.
49. Title and rights of purchasers.
50. — In general.
 - (1). In general.
 - (2). Liens, charges, and incumbrances.
51. — Possession.
52. — Relief against defects in title or property.
53. — Defects or irregularities in judgment, decree, order, or sale.
54. — Modification, vacation, or reversal of judgment, decree, or order.
55. — Opening or vacation of sale.
56. Liabilities of purchasers.
57. Assignees of certificates of sale.
58. Grantees of purchasers.
59. Redemption.
60. Actions to redeem.
61. Conveyance to purchaser.
62. Proceeds.
63. Fees and expenses.
64. Wrongful sale.

230. JURY**SUBJECTS INCLUDED**

Bodies of persons sworn to inquire into and determine matters of fact in judicial proceedings, more particularly petit juries or trial juries, selected and sworn to try issues

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of fact, in civil or criminal proceedings, on the evidence presented

Right to trial by jury

Nature and constitution of different kinds of juries

Qualifications, exemption, selection, summoning and compensation of jurors in general

Competency of jurors, and challenges and trial thereof

Impaneling and swearing jury for trial of particular cause

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Admiralty cases, see ADMIRALTY

Advisory jury, and jury determining special issues in cases ordinarily tried by court, see EQUITY, TRIAL, DIVORCE, WILLS

Civil rights, discriminatory exclusion from jury, see CIVIL RIGHTS

Condemnation or eminent domain, jury assessing compensation, see EMINENT DOMAIN

Grand jury, constitution, etc., and proceedings, see GRAND JURY, INDICTMENTS AND CHARGING INSTRUMENTS

Misconduct of counsel on voir dire examination or in other proceedings, see CRIMINAL LAW, TRIAL

Misconduct of or affecting jury as grounds for new trial or reversal, see APPEAL AND ERROR, CRIMINAL LAW, NEW TRIAL

Proceedings at trials by jury, including province of court and jury, instructions and verdict, see CRIMINAL LAW, TRIAL and specific topics

I. NATURE AND CONSTITUTION OF JURIES, ¶1-8.

II. RIGHT TO TRIAL BY JURY, ¶9-37.

III. QUALIFICATIONS OF JURORS AND EXEMPTIONS, ¶38-56.

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION, ¶57-82.

V. COMPETENCY OF JURORS, CHALLENGES, AND OBJECTIONS, ¶83-142.

VI. IMPANELING FOR TRIAL, AND OATH, ¶143-150.

I. NATURE AND CONSTITUTION OF JURIES.

1. Nature and functions in general.
2. Constitutional and statutory provisions.
3. Constitution in general.
4. Number of jurors.
5. Apportionment of jurors.
6. Special or struck juries.
7. Foreign juries.
8. Mixed juries.

II. RIGHT TO TRIAL BY JURY.

9. Nature and scope in general.
10. Constitutional and statutory provisions.
- 10.5. Persons entitled.
11. Courts in which trial by jury is required.
 - (1). In general.
 - (2). Probate courts.
 - (3). Federal courts.
 - (4). Courts-martial.
 - (5). Application of provisions of federal Constitution to state courts.
 - (6). Jurisdiction of inferior courts of cases in which trial by jury is guaranteed.
12. Nature of cause of action or issue in general.
 - (1). In general.
 - (1.1). Common law or statutory actions, in general.
 - (1.2). Sovereigns, actions against.
 - (1.3). Complex cases.
 - (3). Issues of law or fact in general.
 - (4). Contracts liquidating debt or damages.
 - (5). Defenses.
 - (6). Plea of payment.
13. Legal or equitable actions or issues.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Application of constitutional provisions in general.
 - (4). Statutory provisions.
 - (5). Issues of fact in equitable actions.
 - (5.1). — In general.
 - (6). — Set-off and counterclaim.
 - (7). — Fraud.
 - (8). — Question of title.
 - (9). — Assessment of damages.
 - (10). — Issues in partition.

230. JURY**II. RIGHT TO TRIAL BY JURY.(Cont'd)**

- (11). — Issues in suits for foreclosure of liens and mortgages.
- (12). — Issues in suits for injunction and abatement of nuisances.
- (13). — Issues in specific performance.
- (19). Interpleader or intervention.
- (20). Particular proceedings in equitable actions.
- 14. Particular actions and proceedings.
 - (1). In general.
 - (1.1). Patent and copyright cases.
 - (1.2). Antitrust and trade regulation cases.
 - (1.3). Stockholders and investors, actions by.
 - (1.4). Employment and labor relations cases.
 - (1.5). Civil rights actions.
 - (2). Actions for the recovery of money only or of specific real or personal property.
 - (3). Accounting and settlement.
 - (4). Establishment and foreclosure of liens or mortgages.
 - (5). Enforcement of trust.
 - (6). Cancellation and reformation of instruments.
 - (7). Creditors' suits, and suits to set aside fraudulent conveyances.
 - (9). Quieting title and determination of adverse claims.
 - (10). Partition.
 - (11). Injunction in general.
 - (12). Nuisance abatement cases.
 - (12.5). Declaratory judgment cases.
 - (13). Specific performance.
 - (14). Enforcement of judgment.
- 14.5. Multiple parties or issues.
 - (1). In general.
 - (2). Joinder of legal and equitable issues.
 - (2.1). — In general.
 - (3). — Legal defense, set-off, or counterclaim.
 - (4). — Equitable defense, set-off, or counterclaim.
- 15. Amount or value in controversy.

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- 16. Particular proceedings in civil actions.
 - (1). In general.
 - (5). Execution.
 - (6). Proceedings to enforce or discharge attachment or garnishment.
 - (8). Motion to vacate judgment.
 - (9). Attorney fee determinations.
- 17. Trial on appeal or other proceeding for review.
 - (1). In general.
 - (2). Appeals from justices of the peace.
 - (3). Probate matters.
 - (4). Condemnation proceedings.
- 18. Particular forms or kinds of civil actions; summary proceedings.
- 19. Civil proceedings other than actions; special proceedings.
 - (1). In general.
 - (3). Mandamus.
 - (6.5). Mental health determinations.
 - (7). Administration of estates of decedents.
 - (7.5). Probate and contest of wills.
 - (9). Bankruptcy and insolvency proceedings.
 - (11). Eminent domain.
 - (12). Suspension or removal of officers.
 - (13). Issuance and cancellation of licenses.
 - (15). Seizures, penalties, and forfeitures.
 - (17). Proceedings under tax laws.
 - (18). Discipline of attorney.
 - (19). Habeas corpus.
- 19.5. Dependent, neglected, or delinquent children, proceedings involving.
- 19.10. Domestic relations cases.
 - (1). In general.
 - (2). Paternity cases.
- 20. Criminal prosecutions.
- 21. — In general.
 - 21.1. — Application of constitution in general.
 - 21.2. — Statutory provisions.
 - 21.3. — Commitment to industrial schools or reformatories.

230. JURY**II. RIGHT TO TRIAL BY JURY.(Cont'd)**

- 21.4. — Habitual criminals.
- 21.5. — Mental condition, determination of.
- 22. — Misdemeanors and minor offenses.
 - (.5). In general.
 - (1). Application of constitutional provisions in general.
 - (2). Offenses in general.
 - (3). Disorderly conduct and drunkenness.
 - (4). Sale of intoxicating liquors.
- 23. — Violations of municipal ordinances.
 - (.5). In general.
 - (1). Application of constitutional and statutory provisions in general.
 - (2). Offenses.
- 24. — Assessment of punishment.
- 24.1. — Probation and revocation thereof.
- 24.2. — Other particular proceedings.
- 24.5. Contempt proceedings.
- 25. Demand for jury.
 - (1). Right to demand jury trial in general.
 - (2). Necessity for demand.
 - (3). Necessity for demand in criminal prosecutions.
 - (4). Excuse for failure to make demand.
 - (5). Notice of demand.
 - (6). Time for making demand.
 - (7). Time for making demand in justice's court.
 - (8). Form and sufficiency of demand.
 - (9). Effect of demand made at previous trial or term of court.
 - (10). Special or struck jury.
 - (10.5). Withdrawal of demand.
 - (11). Determination of right.
- 26. Payment or deposit of jury fees.
- 27. Waiver of right.
 - 27.1. — In general.
- 28. — In civil cases.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Right to waive jury.
 - (4). Necessity of formal waiver.
 - (5). Form and sufficiency of waiver.
 - (6). Submission to court.

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- (7). Submission to arbitration.
- (8). Noticing or transferring case for trial on court or jury docket.
- (9). Failure to appear or participate in trial.
- (10). Participating in proceedings after refusal of jury.
- (11). Choice of remedies.
- (12). Consent to reference.
- (13). Number of jurors.
- (14). Special jury.
- (15). Evidence of waiver.
- (16). Record of waiver.
- (17). Operation and effect of waiver.
- 29. — In criminal cases.
 - (1). In general.
 - (2). Right to waive jury in general.
 - (3). Misdemeanors and minor offenses.
 - (4). On demurrer or plea of guilty.
 - (5). Number of jurors.
 - (6). Form and sufficiency.
 - (7). Operation and effect.
- 30. Denial or infringement of right.
- 31. — In general.
 - 31.1. — Statutory provisions.
 - 31.2. — Rights of action and procedure in civil cases.
 - (1). In general.
 - (2). In equity.
 - (3). Pleading.
 - (4). Judgment.
 - (5). New trial.
 - (6). Compulsory reference.
 - (7). Restrictions on right to appeal.
 - 31.3. — Practice and procedure in criminal cases.
 - (1). In general.
 - (2). Restrictions on right of appeal.
 - (3). Requirement of bail.
 - 31.4. — Proceedings for procurement of jury trial.
 - 31.5. — Costs.
- 32. — Number of jurors.
 - (1). In general.
 - (2). Jury of less than twelve persons.
 - (3). Decrease in numbers pending trial.

230. JURY**II. RIGHT TO TRIAL BY JURY.**(Cont'd)

- (4). Concurrence of less than whole number.
- 33. — Constitution and selection of jury.
 - (1). In general.
 - (1.1). Representation of community, in general.
 - (1.2). Particular groups, inclusion or exclusion.
 - (1.10). — In general.
 - (1.15). — Race.
 - (1.20). — Age.
 - (1.25). — Sex.
 - (2). Competence for trial of cause.
 - (2.10). — In general.
 - (2.15). — View of capital punishment.
 - (3). Selection from vicinage.

Territorial limitations as effecting exclusion of particular groups, see §33(1.2–1.25), above.
 - (4). Summoning and impaneling; voir dire.

Procedures as operating to exclude particular groups, see §33(1.2–1.25), above.
 - (5). Challenges and objections.
 - (5.10). — In general.
 - (5.15). — Peremptory challenges.
 - (5.20). — Standing and waiver.
 - 34. — Restriction or invasion of functions of jury.
 - (1). In general.
 - (2). Weight and sufficiency of evidence.
 - (3). Taking case or question from jury.
 - (4). Requiring special verdict.
 - (5). Sentencing matters.
 - (6). — In general.
 - (7). — Particular cases in general.
 - (8). — Drug offenses.
 - (9). — Death penalty.
 - (10). — Weapons.
 - 35. — Effect of provision for other remedy.
 - (1). In general.
 - (2). Appeal to court where jury trial may be had.
 - 36. — Effect of reservation of right of re-submission to jury.
 - 37. — Re-examination or other review of questions of fact tried by jury.

III. QUALIFICATIONS OF JURORS AND EXEMPTIONS.

- 38. Eligibility in general.
- 39. Constitutional and statutory provisions.
- 40. Physical capacity.
- 41. Age.
- 42. Intelligence and educational qualifications.
- 43. Knowledge of language.
- 44. Religious belief.
- 45. Prosecution for or conviction of crime.
- 46. Citizenship and loyalty.
- 47. Residence.
- 48. Property qualification in general.
- 49. Freeholders.
- 50. Householders.
- 51. Payment of taxes.
- 52. Qualifications as voter.
- 53. Prior service as juror.
- 54. Qualifications for service in particular courts.
- 55. Exemptions.
- 56. Effect of disqualification or exemption of juror.

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION.

- Procedures as effecting exclusion of groups, see §33(1–5.20), above.*
- 57. Nature and form of proceeding in general.
 - 58. Constitutional and statutory provisions.
 - 59. Jury commissioners or other officers or boards.
 - (.5). In general.
 - (1). Appointment and qualification.
 - (2). De facto officers.
 - (3). Interest or bias as disqualification to act.
 - (4). Term of office.
 - (5). Compensation.
 - 60. Jury list.
 - 61. — In general.
 - 62. — Procurement and selection of names.
 - (.5). In general.
 - (1). Officers authorized or required to act in making list.
 - (2). Time or place of meeting or selection.

230. JURY**IV. SUMMONING, ATTENDANCE,
DISCHARGE, AND COM-
PENSATION.(Cont'd)**

- (3). Mode of procedure.
- 63. — Making and requisites of list and record.
- 64. — Replacing names and revision of list.
- 65. Jury wheel or box.
- 66. Selection and drawing of regular panel.
 - (1). In general.
 - (2). What officer may or must act.
 - (3). Interference with selection.
 - (4). Time and place.
 - (5). Record of drawing.
 - (6). Size of panel.
 - (7). General panel for use in different departments or divisions of court.
- 67. Summoning jurors.
 - (.5). In general.
 - (1). Issuance and requisites of writ of venire or other process or order.
 - (2). Service of writ or notice.
 - (3). Officers who may summon.
- 68. Return of venire or other process or order.
- 69. Filing and publication of list of jurors summoned.
- 70. Special venire or panel.
 - (.5). In general.
 - (1). Grounds for ordering.
 - (2). Right to special venire.
 - (3). Application and order for special venire.
 - (4). Issuances and requisites of venire.
 - (5). Joining distinct panels drawn for different departments of court.
 - (6). Time for drawing and notice thereof.
 - (7). Size of panel.
 - (8). Selection or drawing of jurors.
 - (9). Open venire.
 - (10). Qualifications of jurors on special venire.
 - (11). Who may summon.
 - (12). Return.
- 71. Special or struck jury.
- 72. Talesmen or additional jurors.

**IV. SUMMONING, ATTENDANCE,
DISCHARGE, AND COM-
PENSATION.(Cont'd)**

- (.5). In general.
- (1). When proper.
- (2). Summoning in advance.
- (3). Selection of jurors.
- (4). Ordering jurors from other courts.
- (5). Number to be summoned.
- (6). Who may summon.
- (7). Oath of officer.
- (8). Filing or publication of list of jurors summoned.
- 73. Compelling attendance of jurors.
- 74. Punishment for failure to attend or serve.
- 75. Excusing and discharging jurors from attendance.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Conflicting public duties.
 - (4). Who may excuse.
 - (5). Application for excuse.
 - (6). Liability to recall.
- 76. Term of service; post-trial contacts.
- 77. Compensation of jurors.
 - (.5). In general.
 - (1). Right to compensation and amount thereof.
 - (2). Liability of county or municipality and payment.
- 78. Drawing jurors for trial of cause.
- 79. — In general.
- 79.1. — Manner of drawing in general.
- 79.2. — Order of calling names.
- 79.3. — Right to particular juror or jury.
- 80. — Right to full panel to select from.
- 81. — Number of jurors to be drawn or presented before challenge.
- 82. Effect of errors and irregularities.
 - (.5). In general.
 - (1). Jury list.
 - (2). Selection, drawing, and summoning.
 - (3). Special venire.
 - (4). Talesmen or additional jurors.
- V. COMPETENCY OF JURORS,
CHALLENGES, AND
OBJECTIONS.**
- 83. Competency for trial of issues in general.

230. JURY**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (1). In general.
- (2). Witnesses.
- (3). Official position.
- 84. Constitutional and statutory provisions.
- 85. Discretion of court.
- 86. Pecuniary interest.
- 87. — In general.
- 88. — Member of association or stockholder of corporation.
- 89. — Citizen or taxpayer of municipality.
- 90. Relationship to party or person interested.
- 91. Relationship to attorney or counsel.
- 92. Business connection or transactions with party or attorney.
- 93. Prior service as juror.
- 94. — In general.
- 95. — In same or similar cause.
- 96. Interest in other cause pending.
- 97. Bias and prejudice.
 - (1). In general.
 - (2). Personal relations in general.
 - (3). Membership in association or organization.
 - (4). Influence on verdict.
- 98. Formation and expression of opinion as to cause.
- 99. — In general.
 - 99.1. — Knowledge of matters in general.
 - 99.2. — Opinion as to particular matters.
 - 99.3. — Impressions.
 - 99.4. — Unqualified or fixed opinions.
 - 99.5. — Unexpressed opinions.
 - 99.6. — Inconsiderate or purposeless remarks.
 - 99.7. — Source of information.
- 100. — Pretrial publicity.
- 101. — Evidence at former trial.
- 102. — Evidence at trial of other cause.
- 103. — Influence of opinion on verdict.
 - (1). In general.
 - (2). Effect on presumption of innocence.
 - (3). Belief of juror that opinion will not affect verdict in general.
 - (4). Qualified or hypothetical opinion.

**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (5). Opinion requiring evidence to remove.
- (6). Opinion which will yield to evidence.
- (7). Opinion derived from reading or hearing evidence in cause.
- (8). Opinion founded on statements of parties, witnesses, or persons claiming to know the facts.
- (9). Opinion as to particular matters or issues.
- (10). Opinion derived from prior service as juror.
- (11). Opinion founded on rumor or newspaper reports.
 - (11.1). — In general.
- (12). — Qualified or hypothetical opinion.
- (13). — Opinion requiring evidence to remove.
- (14). — Opinion which will yield to evidence.
- (15). Doubt as to whether opinion will affect verdict.
- 104. Personal opinions and conscientious scruples.
 - 104.1. — In general.
- 105. — Subject-matter of cause.
 - (1). In general.
 - (2). Crimes and criminals.
 - (3). Sale of intoxicating liquors.
 - (4). Questions of law.
- 106. — Particular defenses.
- 107. — Weight and effect of evidence.
- 108. — Punishment prescribed for offense.
- 109. Rejection on court's own motion.
- 110. Waiver of right to object or challenge.
 - (.5). In general.
 - (1). Failure to investigate, challenge, or object in general.
 - (2). Citizenship or residence.
 - (3). Electors, freeholders, or taxpayers.
 - (4). Age of juror.
 - (5). Pecuniary interest and prejudice.
 - (6). Relationship or business connection.
 - (7). Prior service as juror.

230. JURY**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (8). Formation and expression of opinion.
- (9). Summoning, drawing, and impaneling.
- (10). Appearance in cause.
- (11). Passing or tender of juror.
- (12). Acceptance of juror as waiver of challenge.
- (13). Effect of exercise of challenges.
- (14). Effect of failure to exhaust peremptory challenge.
- (15). Withdrawal of challenge.
- (16). Peremptory challenges.
- (17). Special or struck jury.
- 112. Order of challenges on different grounds.
- 113. Order of parties in making challenges.
- 114. Challenge to panel or array, and motion to quash venire.
- 115. — In general.
- 116. — Grounds.
- 117. — Time.
- 118. — Making and sufficiency.
- 119. — Exception to or denial of challenge.
- 120. — Affidavits and other evidence.
- 121. — Trial and determination.
- 122. Requiring juror to stand aside.
- 124. Challenges for cause.
- 125. — In general.
- 126. — Grounds.
- 127. — Time.
- 128. — Order of challenges.
- 129. — Making and sufficiency.
- 130. — Exception or denial.
- 131. — Examination of juror.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Laying foundation for peremptory challenges.
 - (4). Extent of examination.
 - (5). Pecuniary interest.
 - (6). Bias and prejudice.
 - (7). Formation and expression of opinion.
 - (8). Personal opinions and conscientious scruples.

**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (9). Statutory interrogations.
- (10). Examination by court.
- (11). Re-examination.
- (12). Rights and privileges of jurors.
- (13). Mode of examination.
- (14). Oath.
- (15). Form and sufficiency of questions propounded.
- (15.1). — In general.
- (16). — Formation and expression of opinion.
- (17). — Personal opinions and conscientious scruples.
- (18). Form and sufficiency of answers.
- 132. — Evidence.
- 133. — Trial and determination.
- 134. Peremptory challenges.
- 135. — In general.
- 136. — Number.
 - (.5). In general.
 - (1). Statutory provisions.
 - (2). Civil actions and proceedings.
 - (3). As affected by joinder of parties or actions.
 - (4). Criminal prosecutions.
 - (5). Nature of offense and extent of punishment.
 - (6). Codefendants.
 - (7). Number allowed state in prosecutions of joint defendants.
 - (8). Several counts in same indictment.
 - (9). Disabling of jurors pending trial.
- 137. — Time.
 - (1). In general.
 - (2). Discretion of court.
 - (3). After acceptance, passing, or tender of juror.
 - (4). After swearing.
- 138. — Order and exhaustion of challenges.
 - (.5). In general.
 - (1). Discretion of court.
 - (2). Order of challenges.
 - (3). Exhaustion of challenges.
- 139. — Making and sufficiency.
- 140. — Operation and effect.
- 142. Objections and exceptions.

231. JUSTICES OF THE PEACE**VI. IMPANELING FOR TRIAL, AND OATH.**

- 143. Constitution of jury for trial of cause.
- 144. Designation and identity of jurors.
- 145. Effect of service on jury of person not drawn therefor.
- 146. Impaneling and organization in general.
- 147. Appointment of foreperson.
- 148. Oath.
 - (1). In general.
 - (2). When administered.
 - (3). Reswearing jury.
 - (4). Form and sufficiency.
- 149. Discharge of juror or jury pending trial.
- 150. Objections and exceptions.

231. JUSTICES OF THE PEACE**SUBJECTS INCLUDED**

Magistrates and other inferior judicial officers authorized to act as conservators of the peace with subordinate judicial powers within limited districts

Appointment, qualification, tenure, and removal of such officers, and ex officio and de facto justices of the peace

Their jurisdiction and powers, proceedings before them in general, and review thereof

Their rights, duties, and liabilities

Liabilities on their official bonds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Courts of record, justices of the peace as members of, see **COURTS**

Particular ex officio functions—

Acknowledgments or proof of deeds, etc., see **ACKNOWLEDGMENT**

Administering oaths, see **OATH**

Affidavits, see **AFFIDAVITS**

Solemnizing marriages, see **MARRIAGE AND COHABITATION**

Taking depositions, see **PRETRIAL PROCEDURE**

Particular proceedings in exercise of preventive and provisional jurisdiction, see **PAR-**

ENT AND CHILD II, PROTECTION OF ENDANGERED PERSONS, CRIMINAL LAW, ARREST, BAIL, SEARCHES AND SEIZURES

United States Magistrate Judges, see **UNITED STATES MAGISTRATE JUDGES**

- I. APPOINTMENT, QUALIFICATION, AND TENURE, ¶1–11.
- II. RIGHTS, DUTIES, AND LIABILITIES, ¶12–30.
- III. CIVIL JURISDICTION AND AUTHORITY, ¶31–62.
- IV. PROCEDURE IN CIVIL CASES, ¶63–138.
- V. REVIEW OF PROCEEDINGS, ¶139–210.
 - (A) APPEAL AND ERROR, ¶139–191.
 - (B) CERTIORARI, ¶192–210.

I. APPOINTMENT, QUALIFICATION, AND TENURE.

- 1. Nature of office.
- 2. Creation and abolition of office.
- 3. Appointment or election.
- 4. Eligibility.
- 5. Qualification.
- 6. De facto justices.
- 7. Justices ex officio.
- 8. Term of office, vacancies, and holding over.
- 9. Resignation or abandonment of office.
- 10. Suspension or removal.
- 11. Title to and possession of office.

II. RIGHTS, DUTIES, AND LIABILITIES.

- 12. Privileges.
- 13. Disabilities.
- 14. Compensation and fees.
- 15. — In general.
- 16. — Particular proceedings and services.
- 17. — Accounting for and disposition of fees.
- 18. — Recovery of fees.
- 19. Duties as conservators of the peace.
- 20. Judicial functions and duties in general.
- 21. Ministerial functions and duties.
- 23. Liabilities for official acts.
- 24. — In general.
- 25. — Judicial acts.
- 26. — Ministerial acts.

231. JUSTICES OF THE PEACE**II. RIGHTS, DUTIES, AND LIABILITIES.(Cont'd)**

- 27. — Negligence or misconduct.
 - 28. — Actions.
 - (1). In general.
 - (2). Notice or demand.
 - (3). Pleading and evidence.
 - 29. Liabilities on official bonds.
 - (1). In general.
 - (2). Actions.
 - 30. Criminal responsibility.
- III. CIVIL JURISDICTION AND AUTHORITY.**
- 31. Nature and scope of jurisdiction in general.
 - 32. Constitutional and statutory provisions.
 - 33. Officers invested with jurisdiction.
 - 34. Nature of subject-matter in general.
 - (1). In general.
 - (2). Penalties and forfeitures.
 - (3). Enforcement of awards.
 - (4). Abatement of nuisances.
 - 35. Actions involving taxes.
 - 36. Actions involving real property.
 - (1). In general.
 - (2). Particular actions.
 - (2.1). — In general.
 - (3). — Actions for trespass or other injuries to land.
 - (4). — Actions for purchase price of land.
 - (5). — Actions for rent or for use and occupation.
 - (6). — Actions for recovery of possession.
 - (7). — Forcible entry and detainer, and recovery of possession by landlord.
 - (8). — Actions for obstructing highways and easements.
 - (9). — Actions for breach of contract or covenants.
 - (10). — Actions by vendee to recover purchase money paid.
 - (11). — Actions respecting boundaries and division fences.
 - (12). Title admitted or not necessarily involved.
 - 37. Actions on contracts.
 - (1). In general.
 - (2). Notes, bonds, and covenants.

III. CIVIL JURISDICTION AND AUTHORITY.(Cont'd)

- (3). Bailment and carriage of goods.
 - (4). Sales.
 - (5). Stockholder's liability.
 - (6). Implied contracts.
 - (7). Contract or tort.
38. Actions for torts.
 - (.5). In general.
 - (1). Actions for assaults and personal injuries.
 - (3). Actions on the case, trespass, conversion and civil theft, and other actions for loss of or injuries to property.
 - (4). Actions against officers for negligence or misconduct.
 - (5). Nuisance.
39. Character of parties.
 - (.5). In general.
 - (1). Corporations.
 - (2). Municipal corporations and public officers.
 - (3). Executors and administrators.
 - (4). Married women.
 - (5). Assignee.
 - (6). Infants and insane persons.
- 39.5. Jurisdiction of cause of action.
40. Domicile or residence of parties.
41. Amount or value in controversy.
42. — In general.
43. — Requisite amount or value.
 - (1). In general.
 - (2). Actions for torts.
 - (3). Actions to recover personal property.
 - (4). Actions for possession of real property.
 - (5). Proceedings to recover rent.
44. — Determination of amount or value.
 - (1). In general.
 - (2). Particular actions and proceedings.
 - (3). Actions for torts.
 - (4). Actions on bills and notes.
 - (5). Actions on bonds.
 - (6). Actions to recover personal property.
 - (7). Attachment and garnishment.
 - (8). Interest, costs, and attorney fees.

231. JUSTICES OF THE PEACE**III. CIVIL JURISDICTION AND
AUTHORITY.(Cont'd)**

- (9). Several or split claims exceeding in aggregate limit of jurisdiction.
- (10). Remission or abandonment of part of claim.
- (11). Original amount as affected by partial payments or reduction from other causes.
- 45. Set-offs and counterclaims.
- 46. Nature of remedy or relief in general.
 - (1). In general.
 - (2). Proceedings for recovery of personal property.
 - (3). Mandamus.
- 47. Equitable jurisdiction and relief.
 - (1). In general.
 - (2). Enforcement of liens.
 - (3). Settlement of partnership affairs.
- 48. Attachment and garnishment.
- 49. Civil proceedings other than actions.
- 50. Consent of parties to jurisdiction.
- 51. Ancillary and incidental jurisdiction.
- 52. Territorial extent.
- 53. Exercise of jurisdiction beyond territorial limits.
- 54. Loss or divestiture of jurisdiction.
 - (1). In general.
 - (2). Absence or delay of justice.
 - (3). Absence or nonappearance of parties.
 - (4). Continuance or adjournment as ousting jurisdiction.
- 55. Powers after expiration of term.
- 56. Powers of successor as to proceedings before former justice.
- 57. Disqualification to act.
 - (1). In general.
 - (2). Relationship.
 - (3). Attorney or agent for parties.
- 58. Jurisdiction to be shown by record.
 - (1). In general.
 - (2). Jurisdiction as dependent on place of bringing suit.
 - (3). Jurisdiction as dependent on amount in controversy.
 - (4). Process or appearance.
 - (5). Pleading jurisdictional facts.
- 59. Presumptions as to jurisdiction.

**III. CIVIL JURISDICTION AND
AUTHORITY.(Cont'd)**

- 60. Waiver of objections.
- 61. Determination of questions of jurisdiction in general.
- 62. Acts and proceedings without jurisdiction.

IV. PROCEDURE IN CIVIL CASES.

- 63. Mode and form in general.
- 64. Constitutional and statutory provisions.
- 66. Conformity to practice in courts of record.
- 67. Forms of action.
- 68. Joinder of causes of action.
- 69. Consolidation of actions.
- 70. Commencement of action or other proceeding in general.
- 71. Place and time of taking proceedings or holding court.
- 72. Venue.
- 73. Change of venue and transfer of cause to other justice.
 - (1). In general.
 - (2). Grounds.
 - (3). Time for application.
 - (4). Application and procedure.
 - (5). Jurisdiction and proceedings after change.
 - (6). Second or subsequent change.
 - (7). Jurisdiction and proceedings after refusal of change.
 - (8). Transfer of cause on expiration of term of justice.
- 75. Removal of cause to court of record.
 - (1). In general.
 - (2). Jurisdiction and proceedings after removal.
 - (3). Pleading after removal.
- 76. Limitation of actions.
See also LIMITATION OF ACTIONS.
- 77. Parties.
- 78. Process.
- 78.1. — In general.
- 79. — Nature and necessity.
- 80. — Issuance.
- 80.1. — Form and requisites.
 - (1). In general.
 - (2). Statement as to nature, form and cause of action.

231. JUSTICES OF THE PEACE**IV. PROCEDURE IN CIVIL CASES.(Cont'd)**

- (3). Direction of place and time for return or appearance.
- (4). Signature.
- 81. — Service.
 - (1). In general.
 - (2). Service on corporation.
 - (3). Authority or capacity to serve.
 - (4). Substituted service.
 - (5). Publication.
- 82. — Return and proof of service.
 - (1). In general.
 - (2). Form and requisites, effect, and evidence as to service.
- 83. — Defects and objections.
- 83.1. — Amendment.
- 84. Appearance by attorney.
 - (.5). In general.
 - (1). Proceedings constituting appearance and effect thereof in general.
 - (2). Waiver of defects or objections.
 - (3). Waiver of disqualification of justice.
 - (4). Waiver of objections to place of bringing suit.
 - (5). Waiver of process.
 - (6). Waiver of defects in process or service.
 - (7). Waiver of irregular adjournments.
- 84.1. Representation by attorney.
- 85. Arrest and bail.
- 86. Attachment.
 - (.5). In general.
 - (1). Nature and grounds.
 - (2). Property subject to attachment.
 - (2.5). Proceedings to procure in general.
 - (3). Affidavits for attachment.
 - (4). Security.
 - (5). Writ or warrant.
 - (6). Levy, lien, and custody and disposition of property.
 - (7). Proceedings to support or enforce.
 - (8). Quashing, vacating, and dissolution.
 - (9). Claims by third persons.
 - (10). Return.
 - (11). Liabilities on bonds.

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (12). Wrongful attachment.
- 87. Garnishment.
 - (.5). In general.
 - (1). Nature and grounds, and persons and property subject to garnishment.
 - (2). Proceedings to procure.
 - (3). Writ or summons, notice, service, and return, and appearance.
 - (4). Proceedings to support or enforce.
 - (5). Claims by third persons.
 - (6). Dissolution and discharge.
 - (7). Operation and effect of garnishment, judgment, or payment.
 - (8). Liabilities on bonds and undertakings.
 - (9). Wrongful garnishment.
- 88. Payment to justice.
- 89. Pleading.
- 89.1. — In general.
- 90. — Mode and form in general.
- 91. — Declaration, complaint, petition, or statement of demand.
 - (.5). In general.
 - (1). Necessity, form, and requisites in general.
 - (2). Particular actions in general.
 - (3). Actions on accounts, notes, or instruments for payment of money.
 - (4). Actions for services rendered.
 - (5). Actions against carriers.
 - (6). Actions for torts.
 - (7). Actions for penalties.
 - (8). Actions for recovery of personal property.
- 92. — Plea, answer, or statement of defense in general.
- 93. — Set-off, counterclaim, and cross-complaint.
- 95. — Demurrer or exception.
- 96. — Amended and supplemental pleadings.
- 97. — Signature and verification.
- 98. — Filing written instrument.
- 99. — Bill of particulars and copy of account.
- 100. — Issues, proof, and variance.
 - (.5). In general.

231. JUSTICES OF THE PEACE**IV. PROCEDURE IN CIVIL CASES.(Cont'd)**

- (1). Issues and proof.
- (2). Variance between allegations and proof.
- 101. — Defects and objections.
- 102. Stipulations.
- 103. Motions.
- 104. Evidence.
- 105. Witnesses, depositions, and affidavits.
- 106. Dismissal and nonsuit.
- 107. Continuance and adjournment.
 - (.5). In general.
 - (1). Power of court, and right to continuance.
 - (2). Procedure.
 - (3). Second or further continuance.
 - (4). Renewal of proceedings after adjournment.
 - (5). Objections.
- 108. Proceedings preliminary to trial.
- 109. Course and conduct of trial in general.
- 110. Reception of evidence.
- 111. Taking case or question from jury.
- 112. Instructions to jury.
- 113. Custody, conduct, and deliberations of jury.
- 114. Verdict and findings.
- 115. Trial by justice without jury, and reference.
- 116. New trial.
- 117. Appeal to jury.
- 118. Judgment.
- 119. — In general.
- 119.1. — Nature and essentials in general.
- 119.2. — Jurisdiction to sustain judgment.
- 119.3. — Process and appearance to sustain judgment.
- 120. — By confession.
- 121. — On consent, offer, or admission.
- 122. — By default.
 - (1). In general.
 - (2). Process, appearance, and pleading to sustain judgment.
 - (3). Default of appearance or in pleading and absence at trial.
 - (4). Taking default and relief awarded.
 - (5). Opening or setting aside default.
- 123. — On summary proceeding.
- 124. — On trial of issues.

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (1). In general.
- (2). Form and requisites.
- (3). Parties.
- 125. — Rendition, entry, and record.
 - (.5). In general.
 - (1). Time for rendition.
 - (2). Entry of judgment.
 - (3). Time for entry.
 - (4). Record and docket of judgment.
 - (5). Signature.
- 126. — Amendment and correction.
- 127. — Opening or vacating.
- 128. — Actions to vacate or for equitable relief.
 - (.5). In general.
 - (1). Nature of remedy and grounds.
 - (2). Existence of other adequate remedy.
 - (3). Procedure.
- 129. — Collateral attack.
 - (1). In general.
 - (2). Grounds in general.
 - (3). Want of jurisdiction.
 - (4). Defects in process.
- 130. — Construction and operation.
- 131. — Lien.
- 132. — Assignment.
- 133. — Suspension, enforcement, revival, and satisfaction.
- 134. — Actions on judgments.
- 135. Execution.
 - (1). In general.
 - (1.5). Property subject to execution.
 - (2). Issuance, form, and requisites of writ.
 - (3). Lien and levy.
 - (4). Stay, quashing, vacating, and other relief against execution.
 - (5). Claims by third persons.
 - (6). Sale.
 - (7). Return.
 - (8). Payment, satisfaction, and discharge.
 - (9). Execution against person.
 - (10). Wrongful execution.
 - (11). Supplementary proceedings.
- 136. Objections and exceptions.

231. JUSTICES OF THE PEACE**IV. PROCEDURE IN CIVIL CASES.(Cont'd)**

- 137. Waiver and correction of irregularities and errors.
- 138. Records and dockets.
 - (.5). In general.
 - (1). Matters to be entered and sufficiency of entries.
 - (2). Cause of action.
 - (3). Time and place of proceedings.
 - (4). Process.
 - (5). Pleadings and affidavits.
 - (6). Evidence.
 - (7). Adjournments.
 - (8). Witnesses and jurors.
 - (9). Inspection and transcripts.
 - (10). Operation and effect.
 - (11). Defects and objections.
 - (12). Amendment or alteration.

V. REVIEW OF PROCEEDINGS.**(A) APPEAL AND ERROR.**

- 139. Nature and form of remedy.
- 140. Statutory provisions.
- 141. Appellate jurisdiction.
 - (1). In general.
 - (2). Jurisdiction dependent on jurisdiction of lower court in general.
 - (3). Actions involving title to real property.
 - (4). Amount in controversy.
 - (5). Waiver of objections and consent to jurisdiction.
 - (6). Determination of jurisdiction.
- 142. Decisions reviewable.
- 143. — In general.
- 144. — Nature of subject-matter.
- 145. — Amount or value in controversy.
 - (1). In general.
 - (2). Cases subject to pecuniary limitation.
 - (3). Requisite amount or value, and determination thereof.
 - (4). Reductions and remissions of amount.
- 146. — Finality of determination.
 - (.5). In general.
 - (1). Necessity, and nature of determination in general.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (2). Judgments of dismissal, nonsuit, and for costs.
- 147. — Nature, scope, and effect of decision.
 - (1). In general.
 - (2). Void judgments.
 - (3). Judgments by default.
 - (4). Judgments by confession.
 - (5). Judgment of dismissal or nonsuit.
 - (6). Rulings other than judgments.
 - (7). Attachment.
- 148. — Mode of rendition, form, and entry of judgment or order.
- 149. Right of review.
 - (1). In general.
 - (2). Waiver or loss of right to appeal.
- 150. Presentation and reservation before justice of grounds of review.
 - (1). In general.
 - (2). Acts without jurisdiction.
 - (3). Defects as to process and parties.
 - (4). Defects in pleadings.
 - (5). Errors and irregularities in proceedings.
 - (6). Motions for new trial and to set aside default.
- 152. Parties.
- 153. Requisites and proceedings for transfer of cause.
- 154. — In general.
- 155. — Time for taking proceedings.
 - (.5). In general.
 - (1). Limitations.
 - (2). Waiver of objections to delay.
 - (3). Effect of delay or failure to take proceedings.
 - (4). Relief in case of failure to proceed in time.
 - (5). Grounds for relief.
 - (6). Absence or fault of justice as ground for relief.
- 156. — Petition or prayer, and allowance.
- 157. — Certificate or affidavit.
 - (.5). In general.
 - (1). Necessity.
 - (2). Time for filing.
 - (3). Form and requisites.

231. JUSTICES OF THE PEACE**V. REVIEW OF PROCEEDINGS.(Cont'd)**

- (4). Amendment of affidavit and supplying omitted affidavit.
- (5). Waiver of objections.
- (6). Service.
- 158. — Payment of fees or costs.
 - (.5). In general.
 - (1). Necessity of payment and effect of failure to pay.
 - (3). Time for payment.
 - (4). Costs and fees included, and payment or tender thereof.
- 159. — Bonds or other securities.
 - (.5). In general.
 - (1). Necessity.
 - (2). Parties required to give security and appeals in forma pauperis.
 - (3). Obligor.
 - (4). Obligees.
 - (5). Sureties.
 - (6). Justification of sureties.
 - (7). Amount of bond or security.
 - (8). Conditions of bond or undertaking.
 - (9). Form and requisites of bond or undertaking.
 - (10). Execution, approval, filing, and service of bond or undertaking.
 - (11). Nature of security required.
 - (12). Amendment or new security.
 - (13). Waiver of defects in bond or delay in filing.
- 160. — Process or notice of appeal.
 - (.5). In general.
 - (1). Necessity of process or notice.
 - (2). Authority to give notice.
 - (3). Form and requisites.
 - (4). Filing and service.
 - (5). Effect of failure to give notice.
 - (6). Defects and amendment.
 - (7). Waiver of want of notice and defects.
- 161. — Entry and docketing.
- 161.1. — Appearance.
 - (1). In general.
 - (2). As waiver.
 - (3). — In general.
 - (4). — Objections to appellate jurisdiction.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (5). — Defects in proceedings for appeal.
- 162. Effect of transfer of cause or proceedings therefor.
 - (.5). In general.
 - (1). Powers and proceedings of lower court.
 - (2). Jurisdiction acquired by appellate court.
- 163. Supersedeas or stay of proceedings.
- 164. Return, statement, record, or transcript.
 - (.5). In general.
 - (1). Matters to be shown by record or transcript.
 - (2). Necessity, scope, contents, and requisites of transcript and bill of exceptions.
 - (3). Transmission or filing.
 - (4). Defects, objections, amendment, and correction.
 - (5). Compelling amendment or transmission of record.
 - (6). Conclusiveness or effect, and questions presented for review.
- 165. Assignment of errors and briefs.
- 166. Dismissal, withdrawal, or abandonment.
 - (.5). In general.
 - (1). Voluntary dismissal of appeal.
 - (2). Grounds for dismissal.
 - (3). Proceedings for dismissal.
 - (4). Judgment on dismissal.
 - (5). Effect of dismissal.
 - (6). Reinstatement.
- 167. Proceedings preliminary to hearing.
 - (1). In general.
 - (2). Change of venue.
 - (3). Dismissal of action or nonsuit.
 - (4). Continuance.
- 168. Offer of judgment.
- 169. Hearing in general.
- 170. Trial of cause anew.
- 170.1. — In general.
- 171. — Cases triable in appellate court.
 - (1). In general.
 - (2). Amount and nature of cause of action.
 - (3). Nature and validity of judgment.
- 172. — Proceedings for trial de novo in general.

231. JUSTICES OF THE PEACE**V. REVIEW OF PROCEEDINGS.(Cont'd)**

- 173. — Scope of inquiry.
 - (.5). In general.
 - (1). Issues as tried below.
 - (2). Errors, irregularities, or defects.
 - (3). Jurisdiction of justice.
- 174. — Proceedings relating to parties, process, and pleading.
 - (.5). In general.
 - (1). Amendments relating to parties.
 - (2). Amendment of process of lower court.
 - (2.5). Pleadings in general.
 - (3). Further pleadings or new pleadings in general.
 - (4). Necessity of new pleadings.
 - (5). New or amended pleadings as a matter of right.
 - (6). Power and discretion of court to allow new or amended pleadings.
 - (7). Supplying lost pleadings.
 - (8). Pleading new cause of action.
 - (9). Dismissal of part of cause of action.
 - (10). Increasing amount demanded.
 - (11). Pleading matter not within jurisdiction of justice.
 - (12). Increasing demand beyond jurisdiction of justice.
 - (13). Pleading new defenses.
 - (14). Pleas in abatement.
 - (15). Pleading set-offs and counter-claims.
 - (16). Changing form of action.
 - (17). Making pleading more definite and certain.
 - (18). Amendments as to jurisdictional facts.
 - (19). Amendments to conform to case or proof.
 - (20). Proceedings for allowance of amendments.
 - (21). Time of pleading anew.
 - (22). Sufficiency of pleadings.
 - (23). Departure from pleadings in lower court.
 - (24). Demurrers on appeal.
 - (25). Waiver of pleas or objections to pleading.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (26). Issues, proof, and variance.
- 175. — Evidence.
- 176. — Mode and conduct of trial.
 - (1). In general.
 - (2). Right to open and close.
- 177. — Questions for jury.
- 178. — Instructions.
- 179. — Verdict and findings.
- 180. — Trial by court.
- 181. — Attachment and garnishment.
- 182. Review.
 - 182.1. — In general.
- 183. — Scope and extent.
 - (.5). In general.
 - (1). Presumptions.
 - (2). Harmless error.
 - (3). Parties entitled to allege error.
 - (4). Discretion of court.
- 184. — On appeal on questions of law.
- 185. — On appeal on questions of fact.
 - (1). In general.
 - (2). Findings on conflicting evidence.
 - (3). Weight and sufficiency of evidence.
 - (4). Verdicts.
- 186. Determination and disposition of cause.
- 187. — In general.
- 188. — Judgment on trial de novo.
 - (1). In general.
 - (2). On default or nonsuit.
 - (3). Amount of judgment.
 - (4). Setting aside judgment.
- 189. — Affirmance.
 - 189.1. — Modification.
 - 189.2. — Reversal.
 - (1). In general.
 - (2). Proceedings on reversal.
 - (3). Vacating or setting aside judgment of appellate court.
- 190. — Remand and proceedings before justice.
- 191. Liabilities on bonds and other securities.
 - (.5). In general.
 - (1). Nature and validity of bond.
 - (2). Release or discharge of surety.
 - (3). Accrual and extent of liability.
 - (4). Judgment against sureties on appeal.
 - (5). Actions.

231E. KIDNAPPING**V. REVIEW OF PROCEEDINGS.(Cont'd)****(B) CERTIORARI.**

- 192. Nature and scope of remedy in general.
- 193. Statutory provisions.
- 194. Existence of or resort to other remedy.
 - (.5). In general.
 - (1). Existence of remedy by appeal.
 - (2). Loss of right to other remedy.
- 195. Jurisdiction.
- 196. Decisions and proceedings reviewable.
 - (.5). In general.
 - (1). Nature of proceedings or subject-matter.
 - (2). Nature of decisions.
 - (3). Issues of law or fact.
 - (4). Amount or value in controversy.
- 197. Grounds.
 - (1). In general.
 - (2). Acts without jurisdiction.
 - (3). Errors and irregularities.
- 198. Defenses and grounds of opposition.
- 199. Right of review.
- 200. Presentation before justice of objections.
- 201. Parties.
- 202. Proceedings to procure writ.
 - (.5). In general.
 - (1). Time for taking proceedings.
 - (2). Affidavit or petition.
 - (3). Payment of costs, and recognizances or bonds.
- 203. Issuance and service of writ or notice thereof.
- 204. Supersedeas or stay of proceedings.
- 205. Return and record.
 - (1). In general.
 - (2). Scope and contents.
 - (3). Sufficiency.
 - (4). Exceptions or traverse.
 - (5). Amendment or further return.
 - (6). Conclusiveness of return or record.
 - (7). Questions presented for review.
- 206. Proceedings preliminary to hearing.
 - (.5). In general.
 - (1). Quashing or dismissal of writ.
 - (2). Assignment of errors, and amendment of process or pleading.
- 207. Hearing.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- 208. Review.
 - (.5). In general.
 - (1). Scope and extent in general.
 - (2). Mode of review and trial de novo.
 - (3). Presumptions.
 - (4). Harmless error.
 - (5). Evidence and questions of fact.
- 209. Determination and disposition of cause.
 - (1). In general.
 - (2). Affirmance.
 - (3). Modification.
 - (4). Reversal.
 - (5). New or final judgment.
 - (6). Restitution.
 - (7). Remand and new trial.
 - (8). Costs.
- 210. Liabilities on bonds.

231E. KIDNAPPING**SUBJECTS INCLUDED**

Taking, carrying away, or removing a person, often a child, by force or fraud, for the purpose of secretly confining or concealing such person or removing him to another location

Attempts to commit such offenses, and aiding therein

Criminal custodial interference

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abduction of female for purpose of marriage, defilement, etc., see **CRIMINAL LAW** ¶45.10

Civil consequences or liability for custodial interference, see **CHILD CUSTODY**

False imprisonment, or mere detention or restraint absent asportation, see **FALSE IMPRISONMENT**

Luring or enticing a child, see also **INFANTS**

231E. KIDNAPPING

10. In general.
11. Statutory and constitutional provisions.
12. — In general.
13. — Validity.
14. Elements.
15. — In general.
16. — Intent.
17. — Asportation; movement of victim.
18. — Confinement, restraint, or detention.
19. — Motive; ransom.
20. — Want of consent.
Include consent raised as a defense.
21. Injury to victim.
22. Other crimes distinguished.
See also CRIMINAL LAW §29(13).
23. Criminal custodial interference.
24. — In general.
25. — Intent.
26. — Consent or wishes of child.
27. Degrees.
28. Attempt.
29. Defenses.
Exclude consent as a defense.
30. Interstate issues.
31. Persons liable.
32. Indictment and information.
33. Evidence.
34. — In general.
35. — Presumptions and burden of proof.
36. — Weight and sufficiency.
37. Trial.
38. — In general.
39. — Instructions.
40. — Questions of law or fact.
41. Sentence and punishment.
See also SENTENCING AND PUNISHMENT.

231H. LABOR AND EMPLOYMENT**SUBJECTS INCLUDED**

The relation created by contracts of employment, express or implied

Rights, powers, duties, and liabilities of employer and employee as between themselves and as to others, incident to the relation

Compensation and benefits owed to private employees

Retaliation or adverse employment action by employer for protected activities by employees, including “whistleblowing,” filing of workers’ compensation claims, etc.

Pension and benefit plans sponsored by private employers, labor organizations, or both, to provide for retirement and welfare of employees, including—

Who are entitled to such allowances and rate and amount thereof

Proceedings to obtain and payment of such benefits

Duties and liabilities of plan administrators

Interference of others with the employment relation

Legal proceedings relating to the employment relation

Apprenticeship, and incidents thereof

Employment agencies

Occupational health and safety and regulation thereof

Liability of employer, other than for workers’ compensation, for injuries to employee, and actions relating thereto

Relations between labor and management and the regulation and control of labor matters generally

Labor organizations

Collective bargaining

Labor contracts

Labor disputes and concerted activities

Unfair labor practices

Mediation, conciliation and arbitration of labor disputes

Labor relations boards and proceedings

Labor organization funds such as strike funds

Civil liabilities arising out of labor relations

Injunctions involving labor relations

Offenses and penalties

Regulation of wages and hours

Family and medical leave rights

Agricultural and migrant labor

231H. LABOR AND EMPLOYMENT

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Agency in general, see **PRINCIPAL AND AGENT, CORPORATIONS AND BUSINESS ORGANIZATIONS**

Antitrust laws, application of, see **ANTI-TRUST AND TRADE REGULATION**

Child labor, see also **INFANTS**

Contracts for specific work not involving a hiring of services generally, see **CONTRACTS**

Corporate officers and agents, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Discrimination in employment, see **CIVIL RIGHTS**

Exemption of pensions from—

Attachment and execution, see **EXEMPTIONS**

Taxation, see **TAXATION**

Federal old age, survivors, and disability benefits, see **SOCIAL SECURITY**

Implied liabilities for services rendered, not in performance of contract obligations or of the duties of any employment or other special relation, see **IMPLIED AND CONSTRUCTIVE CONTRACTS, ASSUMPSIT, ACTION OF**

Indian tribes, non-Indian employees of, see **INDIANS** ¶224

Insurance, construction of policies, see **INSURANCE**

Public employees, matters involving other than labor relations and wages and hours regulation, see **PUBLIC EMPLOYMENT, and other particular topics**

Retaliation by employer for exercise of civil rights or rights under employment discrimination statutes, see **CIVIL RIGHTS**

Retired officers, civil or military, pay of, see **PUBLIC EMPLOYMENT, JUDGES, ARMED SERVICES** and topics relating to other officers

Seamen, injuries to, see **SEAMEN**

Stvedores or other longshoremen, injuries to, see **SHIPPING**

Unemployment compensation, see **UNEMPLOYMENT COMPENSATION**

Workers' compensation, see **WORKERS' COMPENSATION**

I. IN GENERAL, ¶1–59.

II. GOVERNMENT REGULATION IN GENERAL, ¶60–69.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL, ¶70–159.

IV. COMPENSATION AND BENEFITS, ¶160–299.

(A) IN GENERAL, ¶160–236.

(B) ACTIONS, ¶237–279.

(C) RAILROAD EMPLOYEES RETIREMENT BENEFITS, ¶280–299.

V. INTELLECTUAL PROPERTY RIGHTS AND DUTIES, ¶300–329.

VI. TIME OFF; LEAVE, ¶330–399.

VII. PENSION AND BENEFIT PLANS, ¶400–749.

(A) IN GENERAL, ¶400–410.

(B) PLANS IN GENERAL, ¶411–458.

(C) FIDUCIARIES AND TRUSTEES, ¶459–499.

(D) CONTRIBUTIONS AND FUNDING, ¶500–519.

(E) INSOLVENT OR UNDERFUNDED PLANS, ¶520–527.

(F) SPECIAL STATUTORY PROVISIONS, ¶528–530.

(G) ELIGIBILITY, PARTICIPATION, AND COVERAGE, ¶531–555.

(H) COVERAGE AND BENEFITS OF PARTICULAR TYPES OF PLANS, ¶556–576.

(I) PERSONS ENTITLED TO BENEFITS, ¶577–609.

(J) DETERMINATION OF BENEFIT CLAIMS BY PLAN, ¶610–629.

(K) ACTIONS, ¶630–749.

1. IN GENERAL, ¶630–639.

2. ACTIONS FOR REGULATORY SUPERVISION, ¶640–642.

3. ACTIONS TO ENFORCE STATUTORY OR FIDUCIARY DUTIES, ¶643–664.

4. ACTIONS TO ENFORCE CONTRIBUTIONS, ¶665–675.

5. ACTIONS TO RECOVER BENEFITS, ¶676–704.

6. ACTIONS AGAINST PARTICIPANTS OR BENEFICIARIES OR OTHER RECIPIENTS, ¶705–707.

7. COSTS AND ATTORNEY FEES, ¶708–749.

VIII. ADVERSE EMPLOYMENT ACTION, ¶750–899.

(A) IN GENERAL, ¶750–849.

(B) ACTIONS, ¶850–899.

231H. LABOR AND EMPLOYMENT

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP,
 ⚭900–924.

X. APPRENTICES, ⚭925–934.

XI. EMPLOYMENT AGENCIES,
 ⚭935–959.

XII. LABOR RELATIONS, ⚭960–2169.

(A) IN GENERAL, ⚭960–986.

(B) LABOR ORGANIZATIONS,
 ⚭987–1099.

(C) COLLECTIVE BARGAINING,
 ⚭1100–1149.

(D) BARGAINING REPRESENTATIVES,
 ⚭1150–1234.

(E) LABOR CONTRACTS, ⚭1235–1339.

(F) DISPUTES AND CONCERTED ACTIVITIES, ⚭1340–1426.

1. IN GENERAL, ⚭1340–1352.

2. NATURE OF DISPUTE AND PURPOSE OF ACTIVITY,
 ⚭1353–1369.

3. NATURE OF ACTIVITY,
 ⚭1370–1399.

4. PERSONS CONCERNED,
 ⚭1400–1402.

5. SECONDARY PRESSURES,
 ⚭1403–1415.

6. PUBLIC EMPLOYEES,
 ⚭1416–1426.

(G) UNFAIR LABOR PRACTICES,
 ⚭1427–1505.

(H) ALTERNATIVE DISPUTE RESOLUTION, ⚭1506–1649.

1. IN GENERAL, ⚭1506–1516.

2. MATTERS SUBJECT TO ARBITRATION, ⚭1517–1540.

3. ARBITRATION AGREEMENTS,
 ⚭1541–1556.

4. PROCEEDINGS, ⚭1557–1600.

5. ADMINISTRATIVE REVIEW,
 ⚭1600.1–1600.16.

6. JUDICIAL REVIEW AND ENFORCEMENT, ⚭1601–1649.

(I) LABOR RELATIONS BOARDS AND PROCEEDINGS, ⚭1650–1840.

1. IN GENERAL, ⚭1650–1699.

2. PARTIES, ⚭1700–1702.

3. NOTICE AND APPEARANCE,
 ⚭1703.

4. PLEADING, ⚭1704–1710.

5. EVIDENCE IN GENERAL,
 ⚭1711–1723.

6. WEIGHT AND SUFFICIENCY OF EVIDENCE, ⚭1724–1785.

7. WITNESSES, ⚭1786–1789.

8. ABANDONMENT OR DISMISSAL OF PROCEEDINGS,
 ⚭1790–1791.

XII. LABOR RELATIONS—Cont'd

(I) LABOR RELATIONS BOARDS AND PROCEEDINGS—Cont'd

9. HEARING, ⚭1792–1810.

10. ORDERS, ⚭1811–1833.

11. CONCLUSIVENESS OF DETERMINATION OR ORDER,
 ⚭1834–1840.

(J) JUDICIAL REVIEW AND ENFORCEMENT OF DECISIONS OF LABOR RELATIONS BOARDS,
 ⚭1841–1959.

1. REVIEW BY COURTS,
 ⚭1841–1899.

2. ENFORCEMENT BY COURTS,
 ⚭1900–1959.

(K) CIVIL LIABILITIES, ⚭1960–2009.

(L) INJUNCTION, ⚭2010–2169.

1. IN GENERAL, ⚭2010–2036.

2. DISPUTES AND CONCERTED ACTIVITIES, ⚭2037–2070.

3. PERSONS CONCERNED,
 ⚭2071–2082.

4. PUBLIC EMPLOYMENT, ⚭2083.

5. WRONGFUL INJUNCTION,
 ⚭2084.

6. PROCEEDINGS, ⚭2085–2119.

7. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS IN GENERAL, ⚭2120–2128.

8. PERMANENT INJUNCTION IN GENERAL, ⚭2129–2136.

9. VIOLATION AND ENFORCEMENT; CONTEMPT,
 ⚭2137–2162.

10. REVIEW, ⚭2163.

11. COSTS AND ATTORNEY FEES,
 ⚭2164–2169.

XIII. WAGES AND HOURS, ⚭2170–2550.

(A) IN GENERAL, ⚭2170–2209.

(B) MINIMUM WAGES AND OVERTIME PAY, ⚭2210–2449.

1. IN GENERAL, ⚭2210–2223.

2. PERSONS AND EMPLOYMENTS WITHIN REGULATIONS,
 ⚭2224–2249.

3. EXEMPTIONS, ⚭2250–2294.

4. OPERATION AND EFFECT OF REGULATIONS, ⚭2295–2335.

5. ADMINISTRATIVE POWERS AND PROCEEDINGS, ⚭2336–2360.

6. ACTIONS, ⚭2361–2412.

7. INJUNCTIONS, ⚭2413–2449.

(C) EQUAL PAY, ⚭2450–2489.

(D) HOURS OF SERVICE, ⚭2490–2520.

(E) OFFENSES AND PROSECUTIONS,
 ⚭2521–2550.

231H. LABOR AND EMPLOYMENT**XIV. SAFETY AND HEALTH REGULATION IN GENERAL, ¶2551–2619.****XV. MINES, ¶2620–2699.****(A) IN GENERAL, ¶2620–2679.****(B) PNEUMOCONIOSIS; BLACK LUNG BENEFITS, ¶2680–2699.****XVI. AGRICULTURAL LABOR, ¶2700–2749.****XVII. EMPLOYER'S LIABILITY TO EMPLOYEES, ¶2750–3019.****(A) IN GENERAL, ¶2750–2830.5.****1. NATURE AND SCOPE OF EMPLOYER'S DUTY, ¶2750–2799.****2. ACTIONS IN GENERAL, ¶2800–2830.5.****(B) WORKING CONDITIONS AND METHODS OF PERFORMING WORK, ¶2831–2899.****(C) WARNINGS REGARDING WORK PERFORMED, ¶2900–2920.****(D) FELLOW EMPLOYEES, ¶2921–2943.****(E) RISKS ASSUMED BY EMPLOYEE, ¶2944–2976.****(F) CONTRIBUTORY NEGLIGENCE; DIMINUTION OF DAMAGES, ¶2977–3019.****XVIII. RIGHTS AND LIABILITIES AS TO THIRD PARTIES, ¶3020–3200.****(A) IN GENERAL, ¶3020–3024.****(B) ACTS OF EMPLOYEE, ¶3025–3124.****1. IN GENERAL, ¶3025–3077.****2. ACTIONS, ¶3078–3124.****(C) WORK OF INDEPENDENT CONTRACTOR, ¶3125–3200.****XIX. NOTICE OF TERMINATION; RETRAINING, ¶3201–3259.****(A) IN GENERAL, ¶3201–3229.****(B) ACTIONS, ¶3230–3259.****XX. OFFENSES AND PENALTIES, ¶3260–3285.****(A) IN GENERAL, ¶3260–3279.****(B) PROSECUTIONS, ¶3280–3285.****I. IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions.
3. — In general.
4. — Purpose and construction in general.
5. — Validity.
6. — Retroactive operation.
7. What law governs.
8. Preemption.
See also STATES I(B).
9. Pre-employment issues.

I. IN GENERAL.(Cont'd)

10. — In general.
11. — Moving expenses.
12. — Want-ads.
13. — Applications.
14. — Credit history.
15. — Honesty testing.
16. — Polygraphs.
17. — Drug testing.
18. — Physical examinations; genetic testing.
19. — Psychological and similar testing.
20. — Intelligence testing.
21. — Other particular issues.
22. Nature, creation, and existence of employment relation.
23. — In general.
24. — Particular cases in general.
25. — Who is employer; multiple entities.
26. — Borrowed servant doctrine in general.
Rights and liabilities as to third parties, see XVIII.
27. — Supervisor or other person as employer.
28. Independent contractors and their employees.
Liability for acts or conduct, see ¶3125–3183.
29. — In general.
30. — Particular cases.
31. Contracts.
32. — In general.
33. — Right to enter into relation or not; freedom of contract.
34. — Formation; requisites and validity.
 - (1). In general.
 - (2). Particular cases.
35. — Construction and operation in general.
See also ¶108.
36. — Implied contracts.
37. Term, duration, and termination.
Wrongful discharge and retaliation claims, public policy and statutory restrictions on termination, and termination considered as breach of contract or as violation of implied covenant of good faith and fair dealing, see VIII.
38. — In general.
39. — Commencement of relation.
40. — Definite or indefinite term; employment at-will.
 - (1). In general.

231H. LABOR AND EMPLOYMENT**I. IN GENERAL.**(Cont'd)

- (2). Termination; cause or reason in general.
Particular causes or reasons, see VIII.
- (3). Particular cases.
- 41. — Hiring for a period of time.
 - (1). In general.
 - (2). By the year.
 - (3). By the month.
 - (4). Other particular time periods.
- 42. — Lifetime or permanent employment.
- 43. — Other particular terms.
- 44. — Termination by mutual agreement.
- 45. — Termination by employee.
 - (1). In general.
 - (2). Abandonment; constructive resignation.
Constructive discharge, see ¶369, 826.
- 46. — Changed circumstances.
- 47. Modification or rescission of contract.
- 48. Renewal or continuation.
- 49. Manuals, handbooks, and policy statements.
- 50. — In general.
- 51. — Particular cases.
- 52. Actions or proceedings in general.
- 53. Evidence of employment.
- 54. — In general.
- 55. — Presumptions and burden of proof.
Presumption of at-will employment, see ¶40.
- 56. — Admissibility.
- 57. — Weight and sufficiency.
- 58. Questions of law and fact as to employment status.

II. GOVERNMENT REGULATION IN GENERAL.

- 60. In general.
- 61. Constitutional and statutory provisions.
- 62. Administrative boards and officers and agents in general.
- 63. Regulations in general.
- 64. Enforcement procedures.
- 65. Evidence.
- 66. Review.
- 67. Searches and inspections.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.

- 70. In general.
- 71. Constitutional and statutory provisions.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.(Cont'd)

- 72. — In general.
- 73. — Purpose.
- 74. — Validity.
- 75. — Retroactive application.
- 76. What law governs.
- 77. Preemption.
See also STATES I(B).
- 78. Fiduciary relation in general.
- 79. Good faith and fair dealing.
Adverse actions, see ¶841.
- 80. Direction and control by employer in general.
- 81. Rules, regulations, orders, and standards.
- 82. — In general.
- 83. — Grooming; dress codes.
- 84. — Behavior.
- 85. — Manner of conducting business.
- 86. — Polygraph testing.
- 87. Privacy in general.
- 88. Records and confidentiality in general.
- 89. Physical examinations; privacy.
- 90. Psychological examinations; privacy.
- 91. Intelligence testing.
- 92. Searches.
- 93. — In general.
- 94. — Personal effects; desks, offices, cubicles.
- 95. — Body frisks or searches.
- 96. — Computers; electronic data storage.
- 97. Drug testing.
- 98. Freedom of speech.
- 99. Freedom from abuse.
- 100. Blacklisting.
- 101. Seniority rights in general.
See XII for seniority under collective bargaining.
- 102. Coercion.
- 103. Political activities.
See also ¶811.
- 104. Duties of employers in general.
- 105. Duty of employer to provide work.
- 106. Duty of employer to post required notices, in general.
- 107. Employer organizations.
- 108. Construction of employment contract in general.
See also ¶35.
- 109. Employee's duties.
- 110. — In general.

231H. LABOR AND EMPLOYMENT**III. RIGHTS AND DUTIES OF EMPLOYERS
AND EMPLOYEES IN GENERAL.(Cont'd)**

- 111. — Fiduciary duty.
- 112. — Adequacy or extent of performance.
- 113. — Skill and care required.
- 114. — Conflict of interest.
 - (1). In general.
 - (2). Self-serving conduct.
 - (3). Other employers or similar parties.
- 115. — Tender of service.
- 116. — Substantial performance.
- 117. — Substitution of others.
- 118. — Excuses for non-performance.
- 119. Rights of employer as to torts by employee in general.
- 120. Post-employment duties.
- 121. — In general.
- 122. — Duty not to solicit customers.
- 123. — Duty not to compete in general.
Covenants not to compete, see CONTRACTS.
- 124. Injuries to employee by third parties.
- 125. — In general.
- 126. — Rights of employee.
- 127. — Rights of employer.
- 128. Actions by employee against employer.
See XVII for tort liability.
- 129. — In general.
- 130. — Right of action.
- 131. — Nature and form of remedy.
- 132. — Conditions precedent.
- 133. — Defenses.
- 134. — Jurisdiction and venue.
- 135. — Time to sue and limitations.
 - (1). In general.
 - (2). Limitations applicable in general.
- 136. — Parties in general; standing.
- 137. — Pleading.
- 138. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 139. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation.
 - (3). Amount.
 - (4). Punitive or exemplary damages.

**III. RIGHTS AND DUTIES OF EMPLOYERS
AND EMPLOYEES IN GENERAL.(Cont'd)**

- (5). Interest.
 - (6). Evidence.
 - 140. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
 - 141. — Judgment.
 - 142. — Costs and attorney fees.
 - 143. Actions by employer against employee.
 - 144. — In general.
 - 145. — Right of action.
 - 146. — Nature and form of remedy.
 - 147. — Conditions precedent.
 - 148. — Defenses.
 - 149. — Jurisdiction and venue.
 - 150. — Time to sue and limitations.
 - (1). In general.
 - (2). Limitations applicable in general.
 - 151. — Parties in general; standing.
 - 152. — Pleading.
 - 153. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 154. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation.
 - (3). Amount.
 - (4). Punitive or exemplary damages.
 - (5). Interest.
 - (6). Evidence.
 - 155. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
 - 156. — Judgment.
 - 157. — Costs and attorney fees.
- IV. COMPENSATION AND BENEFITS.**
- (A) IN GENERAL.**
- 160. In general.
 - 161. Constitutional and statutory provisions.
 - 162. — In general.

231H. LABOR AND EMPLOYMENT**IV. COMPENSATION AND BENEFITS.(Cont'd)**

- 163. — Purpose.
- 164. — Validity.
- 165. — Retroactive application.
- 166. What law governs.
- 167. Preemption.
See also STATES I(B).
- 168. Wages and salary.
- 169. — In general.
- 170. — Duty to pay in general.
- 171. — Employment status; termination.
- 172. Commissions.
- 173. — In general.
- 174. — Effect of termination of employment.
- 175. Bonus.
- 176. Stock options.
- 177. Deferred compensation.
- 178. Profits or products of business.
- 179. Fringe benefits in general.
- 180. Vacation or personal holiday pay.
- 181. Holiday pay.
- 182. Sick leave.
See also VI.
- 183. “Comp time”.
- 184. Insurance.
- 185. — In general.
- 186. — Medical.
- 187. — Dental.
- 188. — Life.
- 189. — Disability.
- 190. — Liability.
- 191. Employee referral program.
- 192. Employee suggestion.
- 193. Employee incentive program.
- 194. Reimbursements and advances in general.
- 195. Defending claims against employee; indemnity.
- 196. Relocation.
- 197. Travel.
- 198. Additional compensation in general.
- 199. Food.
- 200. Clothing.
- 201. Lodging.
- 202. Education.
- 203. Amount of compensation.
- 204. — In general.

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 205. — Where not fixed by contract in general.
- 206. — Where fixed by contract in general.
- 207. — Determination of amount of compensation in general.
- 208. Raises.
- 209. Deductions, fines, and forfeitures.
- 210. — In general.
- 211. — Negligence or misconduct.
- 212. — Waiver by employer of right to deductions or forfeitures.
- 213. Part performance.
- 214. Waiver by, or estoppel of, employee.
- 215. Where fixed for part of service only.
- 216. Renewal or continuance of employment.
- 217. Severance pay.
- 218. Retirement benefits.
Post-ERISA, see VII.
- 219. — In general.
- 220. — What is a pension.
- 221. Payment.
- 222. — In general.
- 223. — Time when due.
- 224. — Persons liable.
- 225. — Persons entitled.
- 226. — Mode of payment.
- 227. Gratuities as part of payment.
- 228. Recovery of payment.
- 229. Interest.
- 230. Independent contractors.
- 231. Liens, priorities, and preferences.
- 232. — In general.
- 233. — Persons entitled.
- 234. — Priority.
- 235. — Assignment, waiver and forfeiture.
- 236. — Enforcement.

(B) ACTIONS.

- 237. In general.
- 238. Right of action.
- 239. Nature and form of remedy.
- 240. Conditions precedent.
- 241. Defenses.
- 242. Jurisdiction and venue.
- 243. Time to sue and limitations.
- 244. — In general.
- 245. — Limitations applicable in general.
- 246. Parties in general; standing.

231H. LABOR AND EMPLOYMENT**IV. COMPENSATION AND BENEFITS.(Cont'd)**

- 247. Pleading.
- 248. — In general.
- 249. — Complaint, petition, or declaration.
- 250. — Plea or answer.
- 251. — Issues, proof, and variance.
- 252. Evidence.
- 253. — In general.
- 254. — Presumptions and burden of proof.
- 255. — Admissibility.
- 256. — Weight and sufficiency.
 - (1). In general.
 - (2). Wages and salary in general.
 - (3). Existence and terms of contract to pay wage or salary.
 - (4). Payment of wage or salary.
 - (5). Commissions.
 - (6). Effect of termination of employment.
 - (7). Bonuses.
 - (8). Stock options.
 - (9). Profits.
 - (10). Deferred compensation.
 - (11). Vacation or holiday pay.
 - (12). Sick leave.
 - (13). Insurance.
 - (14). Severance pay.
 - (15). Reimbursement of expenses and advances.
 - (16). Miscellaneous additional compensation.
 - (17). Defenses.
- 257. Damages and amount of recovery.
- 258. — In general.
- 259. — Computation and amount.
- 260. — Punitive or exemplary damages.
- 261. — Interest.
- 262. — Evidence.
- 263. Trial.
- 264. — In general.
- 265. — Questions of law or fact.
- 266. — Instructions.
- 267. — Verdict and findings.
- 268. Judgment.
- 269. Costs and attorney fees.
- 270. — In general.
- 271. — Attorney fees in general.
- 272. — Nature and grounds of allowances.
- 273. — Defenses.

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 274. — Amount.
- 275. — Proceedings.

(C) RAILROAD EMPLOYEES RETIREMENT BENEFITS.

- 280. In general.
- 281. Statutory provisions.
- 282. Right to benefits; eligibility and disqualification.
- 283. — In general.
- 284. — Disability.
- 285. Proceedings.
- 286. — In general.
- 287. — Evidence.
- 288. Review.
- 289. — In general.
- 290. — Questions of law and fact.
- 291. Recovery or recoupment of payments.

V. INTELLECTUAL PROPERTY RIGHTS AND DUTIES.

- 300. In general.
- 301. Constitutional and statutory provisions.
- 302. What law governs.
- 303. Preemption.
See also STATES I(B).
- 304. Trade secrets or confidential information.
See also TORTS.
- 305. — In general.
- 306. — What are trade secrets or confidential information of employer.
- 307. — Particular trade secrets or information protected.
 - (1). In general.
 - (2). Technical processes, formulas, etc.
 - (3). Customer information.
- 308. Inventions, discoveries, or creations of employees.
- 309. — In general.
- 310. — Contracts.
- 311. — Matters before or after term of employment.
- 312. — License or shop right of employer.
- 313. Actions.
- 314. — In general.
- 315. — Right of action and defenses.
- 316. — Nature and form of remedy.
- 317. — Conditions precedent.

231H. LABOR AND EMPLOYMENT**V. INTELLECTUAL PROPERTY RIGHTS
AND DUTIES.(Cont'd)**

- 318. — Defenses.
- 319. — Jurisdiction and venue.
- 320. — Time to sue and limitations.
- 321. — Parties in general; standing.
- 322. — Pleading.
- 323. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 324. — Damages and amount of recovery.
- 325. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 326. — Judgment.
- 327. — Costs and attorney fees.

VI. TIME OFF; LEAVE.

Vacations, holidays, and other forms of paid leave, see IV. Discrimination based on pregnancy or maternity, see CIVIL RIGHTS §1176. Discrimination based on marital, parental, or familial status, see CIVIL RIGHTS §1195. Disability discrimination, see CIVIL RIGHTS §1215.

- 330. In general.
- 331. Constitutional provisions, statutes, and ordinances.
- 332. — In general.
- 333. — Purpose and construction in general.
- 334. — Power to enact and validity.
- 335. — Retroactive operation.
- 336. Federal preemption.
See also STATES I(B).
- 337. Eligible employees.
See also §384.
- 338. — In general.
- 339. — Existence of employment relationship.
- 340. — Length of service; minimum hours.
- 341. — Prospective and former employees.
- 342. — Notice of ineligibility.
- 343. Employers affected.
See also §385.
- 344. — In general.
- 345. — Number of employees.

VI. TIME OFF; LEAVE.(Cont'd)

- 346. — Multiple entities.
- 347. — Individuals as “employers”.
- 348. Grounds for leave.
- 349. — In general.
- 350. — Birth or adoption of child.
- 351. — Disability, illness, or health condition.
 - (1). In general.
 - (2). Severity in general.
 - (3). Particular conditions of employees.
 - (4). Family members and other non-employees.
- 352. — Other particular grounds.
- 353. Terms and conditions of leave.
- 354. — In general.
- 355. — Request for leave; notice to employer; foreseeability.
- 356. — Commencement, duration, and termination of leave.
- 357. — Intermittent, reduced, or partial leave.
- 358. — Employee’s obligations during leave; communication.
- 359. — Medical certifications.
- 360. — Other particular terms and conditions.
- 361. Rights of employee; violations.
- 362. — In general.
- 363. — Denial of or interference with rights in general.
- 364. — Discrimination in general.
- 365. — Retaliation in general.
- 366. — Motive or intent in general.
- 367. — Reinstatement; restoration.
 - (1). In general.
 - (2). Equivalent position.
 - (3). Maintenance of benefits.
 - (4). Exemptions and exceptions in general.
 - (5). Ability to perform.
- 368. — Discharge or layoff.
- 369. — Constructive discharge.
- 370. — Discipline.
- 371. — Other particular rights or violations.
- 372. Posting or other notice of statutory rights and obligations.

231H. LABOR AND EMPLOYMENT**VI. TIME OFF; LEAVE.(Cont'd)**

- 373. Non-statutory rights; relationship to statutory rights.
- 378. Administrative agencies and proceedings.
- 379. Existence of other remedies; exclusivity.
Federal preemption, see ¶336.
- 380. Exhaustion of other remedies.
- 381. Actions.
- 382. — In general.
- 383. — Right of action.
- 384. — Persons protected and entitled to sue.
See also ¶337.
- 385. — Persons liable.
See also ¶343.
- 386. — Defenses; time to sue.
- 387. — Parties.
- 388. — Pleading.
- 389. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 390. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 391. — Judgment and relief in general.
Right to reinstatement following leave, see ¶367.
- 392. — Injunction.
- 393. — Monetary relief.
 - (1). In general.
 - (2). Nominal damages.
 - (3). Grounds and subjects.
 - (4). Back pay or lost earnings.
 - (5). Mental suffering, emotional distress, humiliation, or embarrassment.
 - (6). Measure and amount.
 - (7). Exemplary or punitive damages.
 - (8). Liquidated damages.
- 394. — Costs.
- 395. — Attorney fees.

VII. PENSION AND BENEFIT PLANS.

For public employee pensions see MUNICIPAL CORPORATIONS, STATES, UNITED STATES, etc.

(A) IN GENERAL.

- 400. In general.
- 401. Constitutional and statutory provisions.
- 402. — In general.
- 403. — Purpose.
- 404. — Validity.
- 405. — Retroactive application; effective date.
- 406. What law governs.
- 407. Preemption.
Excludes preemption of state laws regulating insurance, see INSURANCE ¶1117. See also STATES I(B).
- 408. Regulatory supervision.
- 409. Subpoenas.

(B) PLANS IN GENERAL.

- 411. In general.
- 411.5. What is a “benefit”.
- 412. Plan as contract.
- 413. Existence of plan in general.
- 414. Plans subject to regulation in general.
- 415. Exempt plans.
- 416. — In general.
- 417. — Government plans.
- 418. — Church plans.
- 419. Pension plans.
- 420. — In general.
- 421. — What is a pension.
- 422. — Defined benefit plans.
- 423. — Defined contribution plans.
- 424. Welfare plans.
- 425. — In general.
- 426. — Medical and health plans.
- 427. — Disability plans.
- 428. — Life and accidental death or dismemberment plans.
- 429. — Severance and early retirement plans.
- 430. Plans not qualified for favorable tax treatment.
- 431. — In general.
See INTERNAL REVENUE ¶3575–3615 for tax treatment of pension and deferred compensation plans.
- 432. — “Top hat” plans.
- 433. Validity of plan.
- 434. — In general.
- 435. — Written agreement requirement.
- 436. — “Sole and exclusive benefit” requirement; anti-inurement rule.

231H. LABOR AND EMPLOYMENT**VII. PENSION AND BENEFIT PLANS.(Cont'd)**

- 437. Interpretation of plan.
- 438. — In general.
Excludes interpretation of plan if inconsistent with summary plan description, see ¶483(2).
- 439. — Deference to plan administrator.
Degree of deference to be given to plan administrator's decision to deny benefits, see ¶685-690.
- 440. — Plain meaning.
- 441. — Construction in favor of participants or against drafter.
- 442. — Extrinsic evidence.
- 443. Amendment of plan.
- 444. — In general.
- 445. — Right to amend.
- 446. — Procedure to amend; oral modification.
Oral modification as grounds for estoppel to deny benefits, see ¶555.
- 447. — Retroactive effect.
Excludes retroactive change of eligibility or coverage rules or reduction of benefits; anti-cutback rule, see ¶554.
- 448. Termination of plan.
- 449. — In general.
- 450. — Right to terminate.
Termination of plan as form of discrimination or retaliation, see ¶793.
- 451. — Successive labor organizations.
- 452. — Cessation, reduction, or transfer of business.
- 453. — Partial termination.
- 454. — Procedure to terminate.

(C) FIDUCIARIES AND TRUSTEES.

- 459. In general.
- 460. Who are fiduciaries.
Excludes whether person who is a fiduciary is acting in fiduciary capacity, see ¶472.
- 461. — In general.
- 462. — Employers.
- 463. — Officers, directors and partners.
- 464. — Banks.
- 465. — Insurance companies and agents.
- 466. — Attorneys and other professionals.
- 467. — Advisors, consultants, and brokers.
- 468. — Unions.
- 469. Eligibility, appointment, tenure, and removal.
- 470. Equal representation requirement.
- 471. Compensation of fiduciaries.
- 472. What activities are in fiduciary capacity.
- 473. — In general.

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 474. — Amendment or termination of plan.
Excludes whether amendment or termination actually is breach of fiduciary duty, see ¶478.
- 475. Duties in general.
Prohibition on disciplining, discriminating or retaliating against participant or beneficiary for exercising rights, see ¶793.
- 476. Good faith in general.
- 477. Prudent person standard.
Prudent person standard as applying to investments or expenditures of plan assets, see ¶489.
- 478. Amendment or termination of plan as breach of duty.
- 479. Notice and disclosure requirements.
- 480. — In general.
- 481. — Participants' request for information.
Penalties for failure to provide information, see ¶661.
- 482. — Misrepresentations or omissions in general.
- 483. — Summary plan description.
 - (1). In general.
 - (2). Inconsistency with plan document.
- 484. — Amendment or termination of plan.
 - (1). In general.
 - (2). Contemplated changes.
- 485. — Notice of continuation coverage.
Whether employee is entitled to continuation coverage, see ¶568; penalties for failure to provide, see ¶663.
- 486. Conflicts of interest in general.
Excludes conflict of interest with respect to investments, see ¶487. Excludes conflict of interest in making benefit determinations, see ¶612.
- 487. Investments and expenditures.
- 488. — In general.
- 489. — Prudence.
- 490. — Diversification.
- 491. — Investments in securities or property of sponsor.
 - (1). In general.
 - (2). Employee stock ownership plans.
- 492. — Advisors and experts.
- 493. — Prohibited transactions; parties in interest.
- 494. — Participant loans.
- 495. Persons liable.
- 496. — In general.
- 497. — Co-fiduciaries; successor fiduciaries.
- 498. — Non-fiduciaries; parties in interest.

231H. LABOR AND EMPLOYMENT**(D) CONTRIBUTIONS AND FUNDING.**

- 500. In general.
- 501. Employees for whom contributions must be made.
Eligibility to participate, see ¶531–545.
- 502. — In general.
- 503. — Independent contractors.
Excludes independent contractor as eligible to participate, see ¶539.
- 504. Parties who must make contributions.
- 505. — In general.
- 506. — Multi-employer plans.
- 507. — Alter ego doctrine; related entities.
- 508. — Successor entities.
- 509. Determination of contribution; amount.
- 510. Collective bargaining.
- 511. Recovery of contributions; overfunded plans.
- 512. — In general.
- 513. — Surplus funds in general.
- 514. — Excess or erroneous contributions.
- 515. — Residual assets; termination of plan.
- 516. Withdrawal or termination liability.
- 517. — In general.
- 518. — Predecessor or successor liability in general.
- 519. — Multi-employer plans.
 - (1). In general.
 - (2). Trade or business under common control.

(E) INSOLVENT OR UNDERFUNDED PLANS.

- 520. In general.
- 521. Insolvency and receivership.
- 522. Pension Benefit Guarantee Corporation; termination insurance.
- 523. — In general.
- 524. — Liability of employer; related or successor entities.
- 525. — Allocation and distribution of benefits.
- 526. — Proceedings.
- 527. — Judicial review.

(F) SPECIAL STATUTORY PROVISIONS.

- 528. In general.
- 529. Coal industry.

(G) ELIGIBILITY, PARTICIPATION, AND COVERAGE.

- 531. In general.
- 532. Eligibility rules in general.
- 533. Who is an employee or participant.
Excludes whether person is participant for purposes of standing to sue plan or fiduciary, see ¶646.
- 534. — In general.
- 535. — Non-union or management employees.
- 536. — Part-time, temporary, or leased employees.
- 537. — Shareholders, partners or owners of employer.
- 538. — Employees of predecessor or related entities.
- 539. — Independent contractors.
- 540. Waiver of right to participate.
Excludes waiver of payment of benefits, see ¶578.
- 541. Service credit for participation or vesting; minimum term.
- 542. — In general.
- 543. — Service before effective date of plan; retroactive service.
- 544. — Interrupted service; break in service.
- 545. — Service with predecessor, successor, or related employer.
- 546. Vesting.
- 547. — In general.
- 548. — Pension plans.
- 549. — Welfare plans.
 - (1). In general.
 - (2). Reservation of right to amend or terminate.
- 550. Forfeiture; loss of eligibility or coverage.
- 551. — In general.
- 552. — By current employees.
 - (1). In general.
 - (2). Termination of employment; misconduct.
 - (3). Forfeiture of continuation coverage; gross misconduct.
- 553. — By former employees or retirees.
 - (1). In general.
 - (2). Reemployment; new employment.
Forfeiture of severance benefits for reemployment, see ¶576.
 - (3). Misconduct; competition with employer.
- 554. Retroactive change of eligibility or coverage rules or reduction in benefits.

231H. LABOR AND EMPLOYMENT**VII. PENSION AND BENEFIT PLANS.(Cont'd)**

555. Estoppel of plan to deny eligibility or coverage.

(H) COVERAGE AND BENEFITS OF PARTICULAR TYPES OF PLANS.

556. In general.

557. Pension and retirement plans.

558. — In general.

559. — Accrued benefit.

560. — Necessity of retirement; normal retirement age.

561. — Early retirement benefits.

562. — Anti-discrimination provisions.

Prohibition of discrimination as interference with protected rights, see ¶793.

563. — Amount of benefit and form of distribution.

(1). In general.

(2). Compensation used to determine benefit.

(3). Lump sum distribution.

(4). Interest.

Interest or discount rate used to calculate lump sum, see ¶563(3).

(5). Deductions and offsets.

564. Medical and health plans.

565. — In general.

566. — Conditions covered.

567. — Treatments and benefits covered.

568. — Continuation coverage.

Notice of continuation coverage, see ¶485, and penalties for failure to provide, see ¶663.

569. — Amount of benefits.

(1). In general.

(2). Deductions and offsets; coordination of benefits.

570. Disability plans.

571. — In general.

572. — Eligibility for benefits; conditions constituting disability.

Whether disability under social security is a determinative factor, see ¶629(3).

573. — Commencement and length of disability; elimination period.

574. — Amount of benefits.

(1). In general.

(2). Deductions and offsets; coordination of benefits.

575. Life and accidental death or dismemberment plans.

576. Severance plans.

(I) PERSONS ENTITLED TO BENEFITS.

577. In general.

578. Waiver of benefits.

579. — In general.

Excludes waiver of right to participate, see ¶540.

580. — Waiver by spouse or former spouse; effect of divorce.

Effect of divorce on designation of beneficiary, see ¶583.

581. Designation of beneficiary.

582. — In general.

583. — Effect of divorce on designation.

584. — Change of beneficiary.

(1). In general.

(2). Right to change.

(3). Mode and sufficiency; substantial compliance.

(4). Waiver and estoppel as to defects.

585. — Consent of spouse to designation of another.

586. Survivor and spousal benefits.

587. — In general.

Spousal waiver of benefits, see ¶580. Effect of divorce on beneficiary designation, see ¶583.

588. — Pre-retirement survivor annuity.

589. — Joint and survivor annuity.

590. Assignment of benefits.

591. — In general.

592. — Anti-alienation.

593. — Use of funds as restitution for criminal sentence.

594. Qualified domestic relations orders.

595. — In general.

596. — Necessity and sufficiency of order.

597. — Operation and effect.

598. Recovery of payments of benefits by plan.

599. — In general.

600. — Erroneous payment or overpayment.

601. — Fraud or misconduct of claimant.

602. — Subrogation to or reimbursement of plan or insurer.

(1). In general.

(2). Made whole doctrine.

(J) DETERMINATION OF BENEFIT CLAIMS BY PLAN.

610. In general.

611. Discretion of administrator; good faith.

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Discretion of administrator as determining standard of review, see ¶684.

612. Conflict of interest of administrator.

Conflict of interest as affecting standard of review, see ¶690.

613. Filing of application or claim; notice to plan.

614. Conditions precedent.

615. Time limitations for filing.

616. Investigation and discovery.

617. Notice of denial or determination; statement of reasons.

618. — In general.

619. — Substantial compliance.

620. Administrative review.

621. — In general.

622. — Filing of claim or appeal; notice to plan.

623. — Time limitations.

624. — Investigation and discovery.

625. — Hearing or review proceeding.

626. — Notice of determination; statement of reasons.

627. Evidence in determination or review proceeding.

628. — In general.

629. — Disability claims.

(1). In general.

(2). Weight and sufficiency.

(3). Disability under social security as determining factor.

(K) ACTIONS.

1. IN GENERAL.

630. In general.

631. Jurisdiction and venue.

632. Parties in general; standing.

633. Time to sue and limitations.

634. Pleading.

635. Exhaustion of remedies.

636. Standard and scope of review.

637. Evidence.

638. Questions of law or fact.

639. Judgment and relief.

2. ACTIONS FOR REGULATORY SUPERVISION.

640. In general.

641. Subpoenas.

642. Judicial review.

3. ACTIONS TO ENFORCE STATUTORY OR FIDUCIARY DUTIES.

643. In general.

644. Adequacy of other remedies.

645. Jurisdiction and venue.

646. Parties in general; standing.

647. Action on behalf of plan or as individual.

648. Time to sue and limitations.

649. Pleading.

650. Exhaustion of remedies.

651. Standard and scope of review.

652. Evidence.

653. — In general.

654. — Presumptions and burden of proof.

655. — Admissibility.

656. — Weight and sufficiency.

657. Questions of law or fact.

658. Judgment and relief.

659. — In general.

660. — Equitable relief; injunction.

661. — Penalties.

662. — Damages.

663. — Continuation coverage violations.

664. Indemnification and contribution among fiduciaries.

4. ACTIONS TO ENFORCE CONTRIBUTIONS.

665. In general.

666. Jurisdiction and venue.

667. Parties in general; standing.

668. Time to sue and limitations.

669. Pleading.

670. Exhaustion of remedies.

671. Standard and scope of review.

672. Defenses.

673. Evidence.

674. Questions of law or fact.

675. Judgment and relief.

5. ACTIONS TO RECOVER BENEFITS.

676. In general.

677. Jurisdiction and venue.

678. Parties in general; standing.

679. Time to sue and limitations.

680. Pleading.

681. Exhaustion of remedies.

682. — In general.

683. — Excuse; futility.

231H. LABOR AND EMPLOYMENT**VII. PENSION AND BENEFIT PLANS.(Cont'd)**

- 684. Standard and scope of review.
- 685. — In general.
- 686. — De novo.
- 687. — Arbitrary and capricious.
- 688. — Abuse of discretion.
- 689. — Procedural irregularities; heightened standard of review.
Heightened standard of review due to conflict of interest, see ¶690.
- 690. — Effect of administrator's conflict of interest.
- 691. Record on review.
- 692. Evidence.
- 693. — In general.
- 694. — Presumptions and burden of proof.
- 695. — Admissibility.
- 696. — Weight and sufficiency.
 - (1). In general.
 - (2). Disability claims.
- 697. Questions of law or fact.
- 698. Judgment and relief.
- 699. — In general.
- 700. — Equitable relief; injunction.
- 701. — Penalties.
- 702. — Damages.
- 703. — Interest.
- 704. — Remand to administrator.

**6. ACTIONS AGAINST PARTICIPANTS
OR BENEFICIARIES OR OTHER
RECIPIENTS.**

- 705. In general.
- 706. Reimbursement or subrogation.

7. COSTS AND ATTORNEY FEES.

- 708. In general.
- 709. Discretion of court.
- 710. Presumptions in general.
- 711. Factors considered in general.
- 712. Result or outcome of litigation.
- 713. Particular cases.
- 714. — In general.
- 715. — Actions to enforce statutory or fiduciary duties.
- 716. — Actions to enforce contributions.
- 717. — Actions to recover benefits.
- 718. — Actions against participants or beneficiaries.
- 719. Amount.

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 720. — In general.
- 721. — Lodestar method.
- 722. Review.

VIII. ADVERSE EMPLOYMENT ACTION.

Adverse action relating to family and medical leave, see VI. Unfair labor practices, see XII(G). Discrimination and retaliation claims under civil rights statutes, or based on public policy against discrimination, see CIVIL RIGHTS.

(A) IN GENERAL.

- 750. In general.
- 751. Constitutional and statutory provisions.
- 752. — In general.
- 753. — Purpose and construction in general.
- 754. — Validity.
- 755. — Retroactive application.
- 756. What law governs.
- 757. Preemption.
See also STATES I(B).
- 758. Wrongful discharge in general.
- 759. Public policy considerations in general.
- 760. Reasons or grounds for adverse action.
- 761. — In general.
- 762. — Motive, intent, pretext, and causation in general.
- 763. — Conduct or misconduct in general.
- 764. — Qualifications of employee.
- 765. — Competence or performance of employee.
- 766. — Disobedience or insubordination.
- 767. — Alcohol or drug use.
- 768. — Garnishment; bankruptcy; economic problems of employee.
- 769. — Economic or competitive interests of employer.
- 770. Exercise of rights or duties; retaliation.
- 771. — In general.
- 772. — Protected activities in general.
- 773. — Motive, intent, and pretext in general.
- 774. — Causation in general.
- 775. Reporting or opposing wrongdoing; criticism and "whistleblowing".
- 776. — In general.
- 777. — Particular cases in general.
- 778. — Protected activities.
- 779. — Motive and intent; pretext.

231H. LABOR AND EMPLOYMENT**VIII. ADVERSE EMPLOYMENT
ACTION.(Cont'd)**

- 780. — Causal connection; temporal proximity.
- 781. Refusal to engage in wrongdoing.
- 782. — In general.
- 783. — Particular cases in general.
- 784. — Protected activities.
- 785. — Motive and intent; pretext.
- 786. — Causal connection; temporal proximity.
- 787. Wages and hours.
- 788. — In general.
- 789. — Particular cases in general.
- 790. — Protected activities.
- 791. — Motive and intent; pretext.
- 792. — Causal connection; temporal proximity.
- 793. Pensions and benefits.
- 794. — In general.
- 795. — Particular cases in general.
- 796. — Protected activities.
- 797. — Motive and intent; pretext.
- 798. — Causal connection; temporal proximity.
- 799. Health and safety.
- 800. — In general.
- 801. — Particular cases in general.
- 802. — Protected activities.
- 803. — Motive and intent; pretext.
- 804. — Causal connection; temporal proximity.
- 805. Workers' compensation.
- 806. — In general.
- 807. — Particular cases in general.
- 808. — Protected activities.
- 809. — Motive and intent; pretext.
- 810. — Causal connection; temporal proximity.
- 811. Constitutional or political rights.
See also CIVIL RIGHTS, CONSTITUTIONAL LAW.
- 812. — In general.
- 813. — Particular cases in general.
- 814. — Protected activities.
- 815. — Motive and intent; pretext.
- 816. — Causal connection; temporal proximity.
- 817. Other particular rights or contexts.
- 818. — In general.

**VIII. ADVERSE EMPLOYMENT
ACTION.(Cont'd)**

- 819. — Particular cases in general.
- 820. — Protected activities.
- 821. — Motive and intent; pretext.
- 822. — Causal connection; temporal proximity.
- 823. What constitutes adverse action.
- 824. — In general.
- 825. — Discharge or layoff.
- 826. — Constructive discharge.
- 827. — Other particular actions.
- 828. Procedural requirements for adverse action; prerequisites.
- 829. — In general.
- 830. — Notice and warnings.
- 831. — Service letter or statement of cause.
- 832. — Investigations.
- 833. Express or implied contracts, adverse action under.
- 834. — In general.
- 835. — Discharge or layoff.
- 836. — Other adverse actions.
- 837. — Procedural requirements; prerequisites.
- 838. Manuals, handbooks, and policy statements, adverse action under.
- 839. — In general.
- 840. — Particular cases.
- 841. Good faith and fair dealing; bad faith.
- 842. — In general.
- 843. — Discharge or layoff.
- 844. — Other adverse actions.
- 845. Administrative agencies and proceedings.
- 846. — In general.
- 847. — Judicial review and enforcement.

(B) ACTIONS.

- 850. In general.
- 851. Nature and form.
- 852. Existence of other remedies; exclusivity.
- 853. Conditions precedent in general.
- 854. Exhaustion.
- 855. Defenses in general.
- 856. Time for proceedings; limitations.
- 857. Persons protected, persons liable, and parties; standing.

231H. LABOR AND EMPLOYMENT**VIII. ADVERSE EMPLOYMENT ACTION.(Cont'd)**

- 858. Pleading.
- 859. Evidence.
Evidence of employment, see ¶53.
- 860. — In general.
- 861. — Presumptions and burden of proof.
- 862. — Admissibility.
- 863. — Weight and sufficiency.
 - (1). In general.
 - (2). Exercise of rights or duties; retaliation.
- 864. Monetary relief; damages.
- 865. — In general.
- 866. — Grounds and subjects.
- 867. — Measure and amount.
- 868. — Aggravation, mitigation, or reduction of loss.
 - (1). In general.
 - (2). Other employment.
 - (3). — In general.
 - (4). — Nature of work; extent of employee's efforts.
 - (5). — Working for former employer; re-employment.
 - (6). — Self-employment.
 - (7). Other particular matters.
- 869. — Nominal damages.
- 870. — Exemplary or punitive damages.
- 871. — Evidence as to damages.
- 872. Trial in general.
- 873. Questions of law or fact.
Questions of law and fact as to employment status, see ¶58.
- 874. Instructions.
- 875. Judgment and relief.
- 876. — In general.
- 877. — Reinstatement.
- 878. Costs.
- 879. — In general.
- 880. — Attorney fees.

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP.

- 900. In general.
- 901. What law governs.
- 902. Preemption.
See also STATES I(B).
- 903. Contracts or relationships susceptible or subject to interference.
- 904. Elements.

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP.(Cont'd)

- 905. Injury.
- 906. Nature of action.
- 907. Enticing employee to leave employment.
- 908. — In general.
- 909. — Competitors.
- 910. Intimidation, coercion, or violence to prevent service.
- 911. Persons liable in general.
- 912. Procurement of discharge.
- 913. — In general.
- 914. — Persons liable.
- 915. Actions in general.
- 916. — In general.
- 917. — Pleading.
- 918. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 919. Trial; questions of law or fact.
- 920. Instructions.
- 921. Damages.
- 922. — In general.
- 923. — Punitive or exemplary damages.

X. APPRENTICES.

- 925. In general.
- 926. Nature.
- 927. Constitutional and statutory provisions.
- 928. Preemption.
See also STATES I(B).
- 929. Eligibility.
- 930. Compensation and benefits.

XI. EMPLOYMENT AGENCIES.

- 935. In general.
- 936. Constitutional and statutory provisions.
- 937. Regulation and regulatory agencies.
- 938. Private agencies.
- 939. Public agencies.
- 940. Contracts.
- 941. — In general.
- 942. — Validity.
- 943. — Operation and effect.
- 944. Compensation and fees.
- 945. — In general.
- 946. — Amount.

231H. LABOR AND EMPLOYMENT**XI. EMPLOYMENT AGENCIES.(Cont'd)**

- 947. — Persons liable.
- 948. — Persons entitled; necessity of license.
- 949. Actions and proceedings.
- 950. — In general.
- 951. — Conditions precedent; exhaustion.
- 952. — Evidence.
- 953. — Review.

XII. LABOR RELATIONS.**(A) IN GENERAL.**

- 960. In general.
- 961. Power to regulate.
- 962. What law governs.
- 963. Constitutional and statutory provisions.
- 964. — In general.
- 965. — Purpose.
- 966. — Validity.
- 967. — Retroactive operation.
- 968. Preemption.
See also STATES I(B).
- 969. Municipal ordinances.
- 970. Construction and operation of statutes, ordinances, and regulations, in general.
- 971. Employments included within acts in general.
- 972. — In general.
- 973. — Carriers.
- 974. — Charitable, educational, and non-profit enterprises.
- 975. — Public employment.
- 976. Employers subject to acts.
- 977. Employees within acts.
- 978. — In general.
- 979. — Particular persons.
- 980. — Agricultural laborers.
- 981. — Guards.
- 982. — Supervisory personnel.
- 983. — Termination of employment; strikers.
- 984. Rights of employees in general.
- 985. Rights and duties of employers in general.
 - (1). In general.
 - (2). Records and reports; disclosure.
- 986. Rules and regulations in general.

(B) LABOR ORGANIZATIONS.

- 987. In general.
- 988. Nature and status in general.
- 989. Constitutional and statutory provisions.
- 990. — In general.
- 991. — Purpose.
- 992. — Validity.
 - (1). In general.
 - (2). Officers and elections.
- 993. — Retroactive operation.
- 994. What law governs.
- 995. Preemption.
See also STATES I(B).
- 996. Right to organize, and legality.
- 997. — In general.
- 998. — Purpose of organization.
- 999. — Public employees.
- 1000. Incorporation and organization.
- 1001. Powers of organizations in general.
- 1002. Property and funds in general.
- 1003. Records and reports; disclosure.
- 1004. Union label.
- 1005. Judicial review or intervention in internal affairs.
- 1006. — In general.
- 1007. — Exhaustion of internal remedies.
- 1008. Constitutions, by-laws and rules.
- 1009. — In general.
- 1010. — Power to adopt and validity in general.
- 1011. — Operation as contract.
- 1012. — Adoption, amendment, and repeal.
- 1013. — Particular regulations.
- 1014. — Judicial review or intervention.
- 1015. Membership.
- 1016. — In general.
- 1017. — Right to join or not to join.
- 1018. — Solicitation of members.
- 1019. — Eligibility and right to membership.
- 1020. — Admission or readmission of members; transfer of membership.
- 1021. — Judicial review or intervention.
- 1022. Rights, duties and obligations of members in general.
- 1023. — In general.
- 1024. — Right to disclosure and inspection of records.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1025. — Speech, association and assembly rights.
- 1026. — Voting rights in general.
- 1027. — Classification and discrimination; seniority rights.
- 1028. — Benefits and property rights.
- 1029. — Contracts.
- 1030. — Judicial review or intervention.
- 1031. Dues, fees, and assessments.
- 1032. — In general.
- 1033. — Persons liable in general.
- 1034. — Use of funds.
 - (1). In general.
 - (2). Political activities.
- 1035. — Notice and disclosure.
- 1036. — Amount.
- 1037. — Payment.
 - (1). In general.
 - (2). Check-off.
- 1038. — Refund.
- 1039. — Non-members; fair share.
 - (1). In general.
 - (2). Use of funds in general.
 - (3). Political activities.
 - (4). Notice and disclosure.
 - (5). Amount.
 - (6). Payment.
 - (7). Refund.
- 1040. — Judicial review or intervention.
- 1041. Withdrawal or resignation of members.
- 1042. Expulsion, suspension or other discipline of members.
- 1043. — In general.
- 1044. — Persons subject to discipline.
- 1045. — Grounds.
 - (1). In general.
 - (2). Particular cases.
- 1046. — Proceedings.
 - (1). In general.
 - (2). Composition of tribunal and jurisdiction.
 - (3). Charges.
 - (4). Notice.
 - (5). Hearing.
 - (6). Evidence.
 - (7). Internal appeal.
- 1047. — Judicial review or intervention.
 - (1). In general.

XII. LABOR RELATIONS.(Cont'd)

- (2). Exhaustion of internal remedies in general.
- (3). Reinstatement.
- (4). Scope of review.
- 1048. Actions for damages.
- 1049. — In general.
- 1050. — Evidence.
- 1051. — Measure and amount of damages.
- 1052. — Questions of fact.
- 1053. — Costs and attorney fees.
- 1054. Meetings.
- 1055. — In general.
- 1056. — Notice.
- 1057. Officers and committees.
- 1058. — In general.
- 1059. — Eligibility and qualifications.
- 1060. Election or appointment of officers.
- 1061. — In general.
- 1062. — Nominations.
- 1063. — Campaigns.
- 1064. — Eligibility to vote.
- 1065. — Conduct of election.
- 1066. — Challenge to election.
 - (1). In general.
 - (2). Administrative proceedings.
 - (3). Judicial review or intervention.
- 1067. Tenure of officers; removal or suspension.
- 1068. — In general.
- 1069. — Grounds.
- 1070. — Proceedings.
- 1071. — Judicial review or intervention.
- 1072. Compensation of officers.
- 1073. Authority and powers of officers.
- 1074. Duties and liabilities of officers.
- 1075. — In general.
- 1076. — Union funds in general.
- 1077. — Accounting and reporting.
- 1078. — Judicial review or intervention.
- 1079. Superior, subordinate, and federated bodies.
- 1080. — In general.
- 1081. — Rights as between affiliate and general organization.
- 1082. — Rights and controversies between affiliates; jurisdictional disputes.
- 1083. — Liability of general organization for acts of affiliates.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1084. — Discipline of affiliates in general.
- 1085. — Trusteeship.
 - (1). In general.
 - (2). Grounds.
 - (3). Proceedings.
 - (4). Operation and effect.
- 1086. — Revocation or suspension of charter.
- 1087. — Disaffiliation.
- 1088. — Property and funds.
- 1089. — Judicial review or intervention.
 - (1). In general.
 - (2). Exhaustion of internal remedies.
 - (3). Trusteeship.
- 1090. Receivership.
- 1091. Merger and dissolution.

(C) COLLECTIVE BARGAINING.

- 1100. In general.
- 1101. Constitutional and statutory provisions.
- 1102. — In general.
- 1103. — Purpose.
- 1104. — Validity.
- 1105. — Retroactive operation.
- 1106. What law governs.
- 1107. Preemption.
See also STATES I(B).
- 1108. Right to bargain collectively.
- 1109. — In general.
- 1110. — Waiver or loss of right.
- 1111. Duty to bargain collectively.
- 1112. — In general.
- 1113. — Nature and scope of duty in general.
- 1114. — Good faith in general.
- 1115. — Public employers.
- 1116. Disclosure of information relevant to bargaining.
- 1117. — In general.
- 1118. — Particular subjects of disclosure.
- 1119. — Adequacy of disclosure.
- 1120. — Public employers.
- 1121. Subjects of bargaining in general.
- 1122. Public employment in general.
- 1123. Particular subjects of bargaining.
- 1124. — In general.
- 1125. — Mandatory subjects in general.
- 1126. — Permissive subjects in general.

XII. LABOR RELATIONS.(Cont'd)

- 1127. — Illegal or nonnegotiable subjects in general.
- 1128. — Wages and hours.
- 1129. — Benefits in general.
- 1130. — Medical benefits.
- 1131. — Pensions and retirement.
- 1132. — Sick leave, vacation, and holidays.
- 1133. — Discipline.
- 1134. — Health and safety in general.
- 1135. — Smoking and tobacco policies.
- 1136. — Alcohol and drug policies; testing.
- 1137. — Seniority.
- 1138. — Work assignments; transfers.
- 1139. — Promotions.
- 1140. — Layoffs; contracting out work.
- 1141. — Grievance and arbitration procedures.
- 1142. Conduct of negotiations.
- 1143. — In general.
- 1144. — Notice.
- 1145. — Impasse.
- 1146. Individual contracts.

(D) BARGAINING REPRESENTATIVES.

- 1150. In general.
- 1151. Constitutional and statutory provisions.
- 1152. — In general.
- 1153. — Purpose.
- 1154. — Validity.
- 1155. — Retroactive operation.
- 1156. What law governs.
- 1157. Preemption.
See also STATES I(B).
- 1158. Freedom in choice of representative; self-organization.
- 1159. Who may act as representative.
- 1160. — In general.
- 1161. — Majority representation.
- 1162. — Local, inside, or independent union.
- 1163. — Organization favored by employer.
- 1164. — Successor to favored union.
- 1165. — Persons authorized to conduct negotiations.
- 1166. Designation of representative.
- 1167. — In general.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1168. — Voluntary recognition.
- 1169. — Authorization cards.
 - (1). In general.
 - (2). Form and contents.
 - (3). Validity in general.
 - (4). Fraud and misrepresentation.
- 1170. — Persons counted in determining majority.
- 1171. Bargaining units.
- 1172. — In general.
- 1173. — Community of interest in general.
- 1174. — Craft or class or industrial unit.
- 1175. — Plant or larger unit.
- 1176. — Single or joint employer.
- 1177. — Multiemployer unit.
- 1178. — Supervisory employees.
 - (1). In general.
 - (2). Particular employees.
- 1179. — Confidential employees; labor nexus.
- 1180. — Employees' family relationship.
- 1181. — Agreement or stipulation.
- 1182. — Particular units.
- 1183. — Modification of unit in general.
- 1184. — Accretion; new employees.
- 1185. — Administrative proceedings.
 - (1). In general.
 - (2). Jurisdiction.
 - (3). Discretion.
 - (4). Time for proceedings.
 - (5). Parties.
 - (6). Notice.
 - (7). Evidence in general.
 - (8). Presumptions and burden of proof.
 - (9). Admissibility.
 - (10). Weight and sufficiency.
 - (11). Hearing.
 - (12). Orders.
- 1186. Election of representative.
- 1187. — In general.
- 1188. — Right to election.
- 1189. — Petition for election.
 - (1). In general.
 - (2). Dismissal.
- 1190. — Campaign.
 - (1). In general.
 - (2). Union's conduct.

XII. LABOR RELATIONS.(Cont'd)

- (3). Employer's conduct.
- 1191. — Eligibility to vote.
 - (1). In general.
 - (2). Particular employees.
- 1192. — Ballots.
 - (1). In general.
 - (2). Form and contents.
- 1193. — Conduct of election.
 - (1). In general.
 - (2). Observers.
 - (3). Intimidation.
- 1194. — Determination of result.
- 1195. — Administrative review of election.
 - (1). In general.
 - (2). Proceedings in general.
 - (3). Time for proceedings.
 - (4). Evidence in general.
 - (5). Presumptions and burden of proof.
 - (6). Admissibility.
 - (7). Weight and sufficiency.
 - (8). Hearing.
 - (9). Relief in general.
 - (10). New election.
- 1196. — Operation and effect of election.
- 1197. Certification of bargaining representative.
 - (1). In general.
 - (2). Operation and effect.
- 1200. Extent of authority and duties of representative in general.
- 1201. — In general.
- 1202. — Litigation authority.
- 1203. — Representation of non-members.
- 1204. — Contract negotiations.
- 1205. — Concerted activities.
- 1206. — Seniority rights.
- 1207. Duty to act impartially and without discrimination; fair representation.
- 1208. — In general.
- 1209. — Discrimination.
 - (1). In general.
 - (2). Union membership.
 - (3). Seniority.
- 1210. — Contract negotiations.
- 1211. — Concerted activities.
- 1212. — Job referral; hiring hall.
- 1213. — Grievances in general.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1214. — Discretion in processing grievances.
- 1215. — Duty to investigate grievances.
- 1216. — Providing counsel.
- 1217. — Settlement of grievances.
- 1218. — Particular grievances.
- 1219. — Actions for breach of duty.
 - (1). In general.
 - (2). Exhaustion of internal remedies.
 - (3). Jurisdiction and venue.
 - (4). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (5). Parties; standing.
- (6). Representative or class actions.
- (7). Process and appearance.
- (8). Pleading.
- (9). Evidence in general.
- (10). Presumptions and burden of proof.
- (11). Admissibility.
- (12). Weight and sufficiency of evidence.
- (13). Trial in general.
- (14). Questions of law and fact.
- (15). Instructions.
- (16). Verdict and findings.
- (17). Damages.
- (18). Judgment and execution.
- (19). Costs and attorney fees.
- 1220. Ratification.
- 1221. Duration and termination of authority.
- 1222. — In general.
- 1223. — Loss of majority support in general.
- 1224. — Presumption of majority support; certification period.
- 1225. — Change in ownership; successor employers.
- 1226. — Multiemployer units.
- 1227. — Workplace relocation.
- 1228. — Modification of employer's business.
- 1229. — Duration of collective bargaining agreement; contract bar rule.
- 1230. — Change in affiliation or union organization.
- 1231. — Employee turnover.
- 1232. — Decertification proceedings.

(E) LABOR CONTRACTS.

- 1235. In general.
- 1236. Right to contract.
- 1237. Constitutional and statutory provisions.
- 1238. — In general.
- 1239. — Purpose.
- 1240. — Validity.
- 1241. — Retroactive operation.
- 1242. What law governs.
- 1243. Preemption.
 - See also STATES I(B).*
- 1244. Prehire agreements.
- 1245. Duty to enter into contract.
- 1246. Making and requisites.
- 1247. — In general.
- 1248. — Writing.
- 1249. — Signature.
- 1250. — Ratification or approval.
- 1251. — Public employment.
- 1252. Validity or propriety.
- 1253. — In general.
- 1254. — Duress.
- 1255. — Particular provisions in general.
- 1256. — Discrimination.
- 1257. — Seniority rights.
- 1258. — Concerted activities.
- 1259. — Dues and fees.
- 1260. — Hot cargo clauses; secondary activities.
- 1261. — Subcontracting.
- 1262. — Wages and hours.
- 1263. — Benefits.
- 1264. — Closed or union shop agreements.
 - (1). In general.
 - (2). Particular agreements.
 - (3). Majority representation and absence of unfair practice.
 - (4). Creation of monopoly.
- 1265. — Public employment.
- 1266. — Waiver.
- 1267. — Estoppel.
- 1268. Construction.
- 1269. — In general.
- 1270. — Purpose of agreement.
- 1271. — Intent of parties.
- 1272. — Language of agreement.
- 1273. — Negotiations; extrinsic circumstances.
- 1274. — Construction by parties.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1275. — Particular provisions.
- 1276. — Management rights.
- 1277. — Merger or zipper clause.
- 1278. — Concerted activities.
- 1279. — Wages and hours.
- 1280. — Benefits.
- 1281. — Classification and seniority rights.
- 1282. — Closed or union shop; check-off.
- 1283. — Discipline.
- 1284. — Discharge.
 - (1). In general.
 - (2). Grounds for discharge.
 - (3). Discharge procedures.
- 1285. — Layoffs.
- 1286. — Waiver.
- 1287. Parties; employees covered.
- 1288. — In general.
- 1289. — Single employer status.
- 1290. — Joint employers.
- 1291. — Successor employers.
- 1292. — Workplace relocation.
- 1293. — Successor unions.
- 1294. — Affiliated unions.
- 1295. — Individual employees.
 - (1). In general.
 - (2). Union membership.
- 1296. Duration and termination.
- 1297. — In general.
- 1298. — Extension or renewal.
- 1299. — Termination in general.
- 1300. — Notice of termination.
- 1301. — Loss of majority status; decertification.
- 1302. — Operation and effect of termination.
- 1303. Modification.
- 1304. — In general.
- 1305. — Notice.
- 1306. Rescission.
- 1307. — In general.
- 1308. — Grounds.
- 1309. Performance or breach.
- 1310. — In general.
- 1311. — Concerted activities.
- 1312. — Hours and wages.
- 1313. — Pensions and other benefits.
- 1314. — Classification and seniority rights.
- 1315. — Discharge.

XII. LABOR RELATIONS.(Cont'd)

- 1316. — Layoffs.
- 1317. — Grievances and arbitration.
- 1318. Actions for breach.
- 1319. — In general.
- 1320. — Exhaustion of internal remedies.
 - (1). In general.
 - (2). Exceptions in general.
 - (3). Repudiation.
 - (4). Union's breach of duty.
 - (5). Futility.
 - (6). Particular claims in general.
 - (7). Working conditions; safety.
 - (8). Wages and bonuses.
 - (9). Pensions and other benefits.
 - (10). Hours.
 - (11). Classification and seniority rights.
 - (12). Discrimination.
 - (13). Discipline.
 - (14). Discharge and layoff.
 - (15). Contracting out work.
 - (16). Concerted activities.
- 1321. — Jurisdiction and venue.
- 1322. — Time to sue, limitations, and laches.
 - See also LIMITATION OF ACTIONS.*
- 1323. — Parties; standing.
- 1324. — Representative or class actions.
- 1325. — Process and appearance.
- 1326. — Pleading.
- 1327. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency of evidence.
- 1328. — Trial.
 - (1). In general.
 - (2). Questions of law and fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 1329. — Damages.
- 1330. — Judgment and execution.
- 1331. — Costs and attorney fees.

231H. LABOR AND EMPLOYMENT**(F) DISPUTES AND CONCERTED ACTIVITIES.****1. IN GENERAL.**

- 1340. In general.
- 1341. Power to regulate.
- 1342. Constitutional and statutory provisions.
- 1343. — In general.
- 1344. — Purpose.
- 1345. — Validity.
 - (1). In general.
 - (2). Picketing.
 - (3). Strikes.
- 1346. — Retroactive operation.
- 1347. Picketing ordinances.
- 1348. What law governs.
- 1349. Preemption.
See also STATES I(B).
- 1350. Activities of individual employees.
- 1351. — In general.
- 1352. — Particular actions.

2. NATURE OF DISPUTE AND PURPOSE OF ACTIVITY.

- 1353. In general.
- 1354. Object or purpose of activity in general.
- 1355. Nature and existence of dispute in general.
- 1356. Existence of strike or lockout.
- 1357. Termination of employment or dispute.
- 1358. Particular disputes or purposes.
- 1359. — In general.
- 1360. — Unionization or closed shop.
- 1361. — Collective bargaining.
- 1362. — Employment or discharge.
- 1363. — Discrimination.
- 1364. — Injury to or interference with business.
- 1365. — Wages and hours.
- 1366. — Working conditions.
- 1367. Unlawful purpose.

3. NATURE OF ACTIVITY.

- 1370. In general.
- 1371. Publicity.
- 1372. Persuasion; inducing breach of contract.
- 1373. Refusal of or withdrawal from employment.
- 1374. Picketing.
- 1375. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1376. — Right to picket in general.
- 1377. — Waiver of right.
- 1378. — Conditions precedent.
- 1379. — Mode and conduct in general.
- 1380. — Mass picketing.
- 1381. — Place of picketing.
- 1382. Signs and banners; truth of representations.
- 1383. Leaflets and newsletters.
- 1384. Strikes.
- 1385. — In general.
- 1386. — Right to strike and legality in general.
- 1387. — Unfair labor practice strikes.
- 1388. — Health and safety; dangerous conditions.
- 1389. — Waiver of right; no-strike clauses.
- 1390. — Conditions precedent.
- 1391. — Conduct of strike and strike-breaking.
- 1392. Lockouts.
- 1393. Boycotts.
- 1394. Threats or coercion.
- 1395. Intimidation and violence.
- 1396. Obstructing access and seizure of property.

4. PERSONS CONCERNED.

- 1400. In general.
- 1401. Small or owner-operated business.
- 1402. Rival unions; jurisdictional disputes.

5. SECONDARY PRESSURES.

- 1403. In general.
- 1404. Absence of dispute between employer and employees.
- 1405. Activity by persons other than employees in general.
- 1406. Nature of dispute and purpose of activity.
- 1407. — In general.
- 1408. — Unionization or closed shop.
- 1409. Particular activities.
- 1410. — In general.
- 1411. — Picketing.
- 1412. — Boycotts of goods.
- 1413. — Refusal to handle goods; “hot cargo”.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1414. — Strikes in general.
- 1415. — Sympathy strikes and similar expressions of indirect interest.

6. PUBLIC EMPLOYEES.

- 1416. In general.
- 1417. Activities of individual employees.
- 1418. Nature of activity.
- 1419. — In general.
- 1420. — Picketing.
- 1421. — Strikes.
 - (1). In general.
 - (2). Right to strike in general.
 - (3). Particular employees.
- 1422. Nature of dispute and purpose of activity.
- 1423. — In general.
- 1424. — Particular disputes or purposes.
- 1425. Secondary pressures.
- 1426. Rival unions; jurisdictional disputes.

(G) UNFAIR LABOR PRACTICES.

- 1427. In general.
- 1428. Constitutional and statutory provisions.
- 1429. — In general.
- 1430. — Purpose.
- 1431. — Validity.
- 1432. — Retroactive operation.
- 1433. What law governs.
- 1434. Preemption.
See also STATES I(B).
- 1435. Unfair practices of employer in general.
- 1436. Strikes and their effect on rights of employees.
- 1437. Particular acts of employer in general.
- 1438. Grievances and arbitration.
- 1439. Interference, restraint, or coercion in general.
- 1440. Intent or motive in general; pretext.
- 1441. Litigation.
- 1442. Discrimination.
- 1443. — In general.
- 1444. — Intent or motive.
- 1445. — Particular acts.
- 1446. Employment.
- 1447. — In general.
- 1448. — During strike.
- 1449. Discipline in general.

XII. LABOR RELATIONS.(Cont'd)

- 1450. Discharge.
- 1451. — In general.
- 1452. — Constructive discharge.
- 1453. — Discharge of supervisors.
- 1454. — Motive or intent in general.
- 1455. — Particular grounds for discharge.
 - (1). In general.
 - (2). Work performance.
 - (3). Violation of work rules.
 - (4). Absenteeism; tardiness.
 - (5). Insubordination or disobedience.
 - (6). Concerted or union activities in general.
 - (7). Organizing activities; solicitation.
- 1456. — Non-membership in union; closed or union shop contracts.
- 1457. — Striking employees.
 - (1). In general.
 - (2). Replacement workers.
 - (3). Misconduct during strike.
- 1458. Layoff.
- 1459. Reinstatement.
- 1460. — In general.
- 1461. — Striking employees.
 - (1). In general.
 - (2). Motive or intent.
 - (3). Business justification.
 - (4). Economic or unfair labor practice strikers.
 - (5). Replacement workers.
 - (6). Misconduct during strike.
 - (7). Seniority rights.
- 1462. Assistance to union.
- 1463. Domination of union.
- 1464. Espionage or surveillance.
- 1465. — In general.
- 1466. — Particular conduct.
- 1467. Interrogation of employees.
- 1468. — In general.
- 1469. — Particular conduct.
 - (1). In general.
 - (2). Polling.
- 1470. — Judicial or administrative proceedings, interrogation in connection with.
- 1471. Expression of views.
- 1472. — In general.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1473. — Particular statements or expressions.
 - (1). In general.
 - (2). Predicting consequences of unionization.
 - (3). Promises of benefits.
 - (4). Threats of reprisal.
- 1474. Pressure to join specific union.
- 1475. Prohibiting union solicitation or activity.
- 1476. — In general.
- 1477. — Particular restrictions.
 - (1). In general.
 - (2). Non-employees.
 - (3). Time.
 - (4). Place.
- 1478. Promotion, demotion, or transfer of employees.
- 1479. Refusal to bargain.
- 1480. — In general.
- 1481. — Representative of employees.
- 1482. — Excuses or defenses.
 - (1). In general.
 - (2). Good faith in general.
 - (3). Doubt as to union's status.
- 1483. — Conduct constituting refusal.
 - (1). In general.
 - (2). Failure to provide information.
 - (3). Sham or surface bargaining.
 - (4). Particular subjects of bargaining.
- 1484. Refusal to sign agreement.
- 1485. Seniority discrimination.
- 1486. Shutdowns and lockouts.
- 1487. Unilateral changes in wages or conditions of employment.
- 1488. — In general.
- 1489. — Impasse in general.
- 1490. — Particular changes.
 - (1). In general.
 - (2). Wages in general.
 - (3). Wage increases.
 - (4). Bonuses.
 - (5). Hours; shift changes.
 - (6). Benefits in general.
 - (7). Health benefits.
 - (8). Pensions.
 - (9). Vacations, holidays, and sick leave.

XII. LABOR RELATIONS.(Cont'd)

- (10). Unilateral layoffs and subcontracting.
- 1491. Responsibility for acts of supervisors and others.
- 1492. Liability of successor employers.
- 1493. Unfair practices of employees or labor organizations.
- 1494. — In general.
- 1495. — Particular practices in general.
- 1496. — Breach of fair representation duty.
- 1497. — Restraint or coercion of employees.
 - (1). In general.
 - (2). Particular practices.
- 1498. — Restraint or coercion of employers.
 - (1). In general.
 - (2). Selection of representatives.
- 1499. — Discrimination.
 - (1). In general.
 - (2). Causing employer discrimination against employees.
 - (3). Referral; hiring hall.
 - (4). Discharge.
- 1500. — Refusal to bargain.
- 1501. — Activities for prohibited objects in general.
- 1502. — Secondary activity.
 - (1). In general.
 - (2). Picketing.
 - (3). Boycotts in general.
 - (4). Refusal to handle goods; "hot cargo".
- 1503. — Recognitional or organizational activity.
- 1504. — Responsibility.
- 1505. Prevention and redress.

(H) ALTERNATIVE DISPUTE RESOLUTION.**1. IN GENERAL.**

- 1506. In general.
- 1507. Constitutional and statutory provisions.
- 1508. — In general.
- 1509. — Purpose.
 - (1). In general.
 - (2). Carriers; Railway Labor Act.
- 1510. — Validity.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1511. — Retroactive operation.
- 1512. What law governs.
- 1513. Preemption.
See also STATES I(B).
- 1514. — In general.
- 1515. — Carriers; Railway Labor Act.
- 1516. Applicability of general arbitration statutes.

2. MATTERS SUBJECT TO ARBITRATION.

- 1517. In general.
- 1518. Availability of judicial remedies.
- 1519. Arbitration favored; presumption of arbitrability.
- 1520. Interest or grievance arbitration.
- 1521. Public employment in general.
- 1522. Carriers; Railway Labor Act.
- 1523. — In general.
- 1524. — Major and minor disputes in general.
- 1525. Particular disputes.
- 1526. — In general.
- 1527. — Jurisdictional disputes; representation.
- 1528. — Work assignments.
- 1529. — Mergers; change in employer.
- 1530. — Working conditions; safety.
- 1531. — Wages and bonuses.
- 1532. — Pensions and other benefits.
- 1533. — Hours.
- 1534. — Classification and seniority rights.
- 1535. — Discrimination.
- 1536. — Discipline.
- 1537. — Discharge and layoff.
- 1538. — Contracting out work.
- 1539. — Concerted activities.
- 1540. Waiver and estoppel.

3. ARBITRATION AGREEMENTS.

- 1541. In general.
- 1542. Requisites and validity.
- 1543. Construction and operation.
- 1544. — In general.
- 1545. — Effect of no strike clause.
- 1546. — Commencement, duration, and termination.
 - (1). In general.

XII. LABOR RELATIONS.(Cont'd)

- (2). Expiration of collective bargaining agreement.
- 1547. — Parties; successor employers.
- 1548. — Interest arbitration.
- 1549. — Matters subject to arbitration under agreement.
 - (1). In general.
 - (2). Arbitration favored; presumption of arbitrability.
 - (3). Exclusion clauses.
 - (4). Arbitrability.
 - (5). Arbitration procedures in general.
 - (6). Time for proceedings.
 - (7). Particular disputes in general.
 - (8). Renewal, modification, or amendment of collective bargaining agreement.
 - (9). Termination of collective bargaining agreement.
 - (10). Working conditions; safety.
 - (11). Wages and bonuses.
 - (12). Pensions and other benefits.
 - (13). Hours.
 - (14). Vacation, holidays, and sick leave.
 - (15). Classification and seniority rights.
 - (16). Promotion, demotion, and transfer; work assignments.
 - (17). Discrimination.
 - (18). Discipline.
 - (19). Discharge and layoff.
 - (20). Contracting out work.
 - (21). Concerted activities.
- 1550. Waiver and estoppel.
- 1551. Modification or renewal.
- 1552. Enforcement of agreement to arbitrate.
- 1553. — In general.
- 1554. — Right to compel arbitration.
- 1555. — Conditions precedent.
- 1556. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and venue.
 - (3). Scope of inquiry; merits of controversy.
 - (4). Time for proceedings.
 - (5). Parties.
 - (6). Pleading.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- (7). Evidence.
- (8). Hearing.
- (9). Findings.
- (10). Relief in general.
- (11). Costs and attorney fees.

4. PROCEEDINGS.

- 1557. In general.
- 1558. Preserving status quo pending proceedings.
- 1559. Grievance proceedings.
- 1560. — In general.
- 1561. — Preliminary procedures.
- 1562. — Disclosure; discovery.
- 1563. — Time for proceedings.
- 1564. — Parties.
- 1565. — Notice.
- 1566. — Evidence.
- 1567. — Hearing.
- 1568. — Determination.
- 1569. Arbitration proceedings in general.
- 1570. Time for proceedings.
- 1571. Stay pending arbitration.
- 1572. Stay of arbitration.
- 1573. Jurisdiction of boards or officers.
- 1574. — In general.
- 1575. — Railroad boards.
- 1576. Appointment and competency of arbitrators.
- 1577. Authority of arbitrators.
- 1578. — In general.
- 1579. — Collective bargaining agreement as limiting authority.
- 1580. — Interpretation of collective bargaining agreement in general.
- 1581. Notice.
- 1582. Hearing.
- 1583. Matters considered; scope of inquiry.
- 1584. Evidence.
- 1585. — In general.
- 1586. — Presumptions and burden of proof.
- 1587. — Admissibility.
- 1588. — Weight and sufficiency.
- 1589. Findings.
- 1590. Award.
- 1591. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1592. — Conformity to collective bargaining agreement.
- 1593. — Conformity to submission.
- 1594. — Completeness.
- 1595. — Particular awards.
 - (1). In general.
 - (2). Working conditions; safety.
 - (3). Wages and bonuses.
 - (4). Pensions and other benefits.
 - (5). Hours.
 - (6). Classification and seniority rights.
 - (7). Discrimination.
 - (8). Discipline.
 - (9). Hiring, promotion, demotion, and transfer; work assignments.
 - (10). Discharge.
 - (11). Layoff.
 - (12). Reinstatement.
 - (13). Contracting out work.
 - (14). Concerted activities.
 - (15). Damages; back pay.
 - (16). Costs and attorney fees.
- 1596. Conclusiveness of award.
- 1597. — In general.
- 1598. — Persons concluded.
- 1599. — Matters concluded.
- 1600. Reconsideration, modification, or clarification.

5. ADMINISTRATIVE REVIEW.

- 1600.1. In general.
- 1600.2. Decisions reviewable.
- 1600.3. Persons entitled to seek review; parties; standing.
- 1600.4. Time for review.
- 1600.5. Petition or other application for review.
- 1600.6. Presentation and preservation of issues for review; record.
- 1600.7. Proceedings on review; hearing.
- 1600.8. Scope of review.
- 1600.9. — In general.
- 1600.10. — Theory or grounds relied on below.
- 1600.11. — Standard of review.
- 1600.12. Harmless, prejudicial, and reversible error.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1600.13. Determination and disposition on review.
- 1600.14. Reopening and reconsideration.
- 1600.15. Further administrative review.
- 1600.16. Costs and fees.

6. JUDICIAL REVIEW AND ENFORCEMENT.

- 1601. In general.
- 1602. Railroads and other carriers in general.
- 1603. Decisions reviewable or enforceable.
- 1604. — In general.
- 1605. — Finality; ripeness.
- 1606. — Carriers; Railway Labor Act.
- 1607. Grounds for impeachment or enforcement.
- 1608. — In general.
- 1609. — Public policy.
 - (1). In general.
 - (2). Particular decisions.
- 1610. — Fraud.
 - (1). In general.
 - (2). Particular decisions.
- 1611. — Breach of duty of fair representation.
 - (1). In general.
 - (2). Particular decisions.
- 1612. Nature and form of proceeding.
- 1613. Jurisdiction and venue.
- 1614. Time for proceedings.
- 1615. Right to review and parties.
- 1616. Presentation of objections in original proceeding.
- 1617. Record.
- 1618. Scope of inquiry.
- 1619. — In general.
- 1620. — Deference in general.
- 1621. — Merits of award.
- 1622. — Presumptions and burden of proof.
- 1623. — Interpretation of collective bargaining agreement.
 - (1). In general.
 - (2). Particular provisions.
- 1624. — Findings of fact.
 - (1). In general.
 - (2). Particular findings.
- 1625. — Carriers; Railway Labor Act.
- 1626. Harmless error.

XII. LABOR RELATIONS.(Cont'd)

- 1627. Determination.
- 1628. — In general.
- 1629. — Remand.
- 1630. Further review.
- 1631. Costs and attorney fees.

(I) LABOR RELATIONS BOARDS AND PROCEEDINGS.**1. IN GENERAL.**

- 1650. In general.
- 1651. Constitutional and statutory provisions.
- 1652. — In general.
- 1653. — Purpose.
- 1654. — Validity.
- 1655. — Retroactive operation.
- 1656. What law governs.
- 1657. Preemption.
 - See also STATES I(B).*
- 1658. Powers and functions of boards.
- 1659. — In general.
- 1660. — Discretion in general.
- 1661. — Collective bargaining; contracts.
- 1662. — Disputes and concerted activities.
- 1663. — Remedies.
- 1664. — Effect of agreement or other litigation.
- 1665. Jurisdiction in general.
- 1666. — In general.
- 1667. — Discretion; declining jurisdiction.
- 1668. — Interstate commerce.
- 1669. Exclusive, concurrent, and conflicting jurisdiction.
- 1670. — In general.
- 1671. — Particular disputes in general.
- 1672. — Collective bargaining in general.
- 1673. — Violence and criminal activity in general.
- 1674. — Torts in general.
- 1675. — Unfair labor practice claims in general.
- 1676. — Practices of employer.
 - (1). In general.
 - (2). Discrimination.
 - (3). Discharge or layoff; reinstatement.
 - (4). Refusal to bargain.
- 1677. — Practices of employees and labor organizations.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- (1). In general.
- (2). Internal affairs of labor organizations.
- (3). Fair representation.
- (4). Concerted activities in general.
- (5). Picketing.
- (6). Strikes.
- (7). Secondary activities.
- 1678. — Grievances and arbitration.
 - (1). In general.
 - (2). Particular disputes.
- 1679. Conditions precedent.
- 1680. Rules and regulations in general.
- 1681. Procedure in general.
- 1682. Discovery.
- 1683. Joinder or consolidation of proceedings.
- 1684. Time for proceedings, limitations, and laches.
- 1685. — In general.
- 1686. — Computation of limitation period in general.
- 1687. — Amended or reinstated charges; relation back.
- 1688. Charges and investigations.
- 1689. — In general.
- 1690. — Content and scope of charges.
- 1691. — Disposition of charges; determination.
- 1692. Interim relief.
- 1693. — In general.
- 1694. — Grounds.
- 1695. — Particular subjects of relief.
 - (1). In general.
 - (2). Activities of employer in general.
 - (3). Discharge; reinstatement.
 - (4). Activities of employees or labor organizations in general.
 - (5). Secondary activities.
- 1696. — Proceedings.
 - (1). In general.
 - (2). Evidence in general.
 - (3). Weight and sufficiency in general.
 - (4). Review.
- 1697. — Operation and effect.

2. PARTIES.

- 1700. In general.

XII. LABOR RELATIONS.(Cont'd)

- 1701. Persons filing charges.
- 1702. Intervention; joinder.

3. NOTICE AND APPEARANCE.

- 1703. Notice and appearance.

4. PLEADING.

- 1704. In general.
- 1705. Complaints.
- 1706. — In general.
- 1707. — Sufficiency.
- 1708. — Amendment.
- 1709. Answer.
- 1710. Issues, proof, and variance.

5. EVIDENCE IN GENERAL.

- 1711. In general.
- 1712. Presumptions and burden of proof.
- 1713. — In general.
- 1714. — Particular issues in general.
- 1715. — Unfair practices of employer.
 - (1). In general.
 - (2). Interference, restraint, or coercion in general.
 - (3). Intent or motive in general; pretext.
 - (4). Discrimination in general.
 - (5). Employment in general.
 - (6). Discharge in general.
 - (7). Motive for discharge; intent or pretext.
 - (8). Layoff.
 - (9). Reinstatement.
 - (10). Prohibiting solicitation or union activity.
 - (11). Refusal to bargain.
- 1716. — Unfair practices of employees or labor organizations.
- 1717. — Remedies.
- 1718. Admissibility of evidence.
- 1719. — In general.
- 1720. — Unfair practices in general.
- 1721. — Discharge or layoff, and reinstatement.
- 1722. — Domination or interference with choice of bargaining representative.
- 1723. — Hearsay and opinion evidence.

231H. LABOR AND EMPLOYMENT**6. WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 1724. In general.
- 1725. Substantial evidence.
- 1726. Character of evidence in general; circumstantial evidence.
- 1727. Inferences from evidence.
- 1728. Particular facts or issues in general.
- 1729. Status of employer in general.
- 1730. Status of employee or labor organization in general.
- 1731. Concerted activities in general.
- 1732. Collective bargaining agreements; contracts.
- 1733. Grievances and arbitration.
- 1734. Unfair practices of employer in general.
- 1735. Interference, restraint, or coercion in general.
- 1736. Discrimination in general.
- 1737. Employment.
- 1738. Discipline in general.
- 1739. Discharge.
- 1740. — In general.
- 1741. — Motive or intent in general; pretext.
- 1742. — Particular grounds for discharge.
 - (1). In general.
 - (2). Work performance.
 - (3). Violation of work rules.
 - (4). Absenteeism; tardiness.
 - (5). Insubordination or disobedience.
- 1743. — Union activities.
 - (1). In general.
 - (2). Particular activities in general.
 - (3). Knowledge of activities.
- 1744. — Non-membership in union; closed or union shop contracts.
- 1745. — Striking employees.
- 1746. Layoff.
- 1747. Reinstatement.
- 1748. — In general.
- 1749. — Striking employees.
- 1750. Assistance to union.
- 1751. Domination of union.
- 1752. — In general.
- 1753. — Disestablishment of union.
- 1754. Espionage or surveillance in general.
- 1755. Interrogation of employees.
- 1756. Expression of employer's views.
- 1757. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1758. — Particular statements in general.
- 1759. — Promises of benefits.
- 1760. — Threats of reprisals.
- 1761. Pressure to join specific union.
- 1762. Prohibiting union solicitation or activity.
- 1763. Promotion, demotion, or transfer.
- 1764. Refusal to bargain collectively.
- 1765. — In general.
- 1766. — Union's majority status.
- 1767. — Conduct constituting refusal.
 - (1). In general.
 - (2). Failure to provide information.
 - (3). Sham or surface bargaining.
- 1768. Particular subjects of bargaining.
- 1769. Shutdowns and lockouts.
- 1770. Unilateral changes in wages or conditions of employment.
- 1771. — In general.
- 1772. — Wages.
- 1773. Acts of supervisory employees or others.
- 1774. Unfair practices of employees or labor organizations.
- 1775. — In general.
- 1776. — Particular practices in general.
- 1777. — Breach of fair representation duty.
- 1778. — Restraint or coercion of employees.
- 1779. — Restraint or coercion of employers.
- 1780. — Discrimination.
- 1781. — Activities for prohibited objects in general.
- 1782. — Secondary activities.
- 1783. — Recognitional or organizational activity.
- 1784. — Responsibility.
- 1785. — Remedies.

7. WITNESSES.

- 1786. In general.
- 1787. Issuance of subpoenas in general.
- 1788. Subpoenas duces tecum.

231H. LABOR AND EMPLOYMENT**8. ABANDONMENT OR DISMISSAL
OF PROCEEDINGS.**

1790. Abandonment or dismissal of proceedings.

9. HEARING.

1792. In general.
 1793. Necessity for or right to hearing.
 1794. Administrative officers.
 1795. Time for hearing; continuance.
 1796. Scope of inquiry.
 1797. Conduct of hearing in general.
 1798. Reception of evidence.
 1799. Questions of law and fact.
 1800. Report and recommendations of administrative officer.
 1801. — In general.
 1802. — Operation and effect; conclusiveness.
 1803. Findings.
 1804. — In general.
 1805. — Sufficiency of findings.
 1806. Determination.
 1807. — In general.
 1808. — Past policies or position; precedent.
 1809. Rehearing.
 1810. Costs and attorney fees.

10. ORDERS.

1811. In general.
 1812. Discretion of board.
 1813. Relief awarded in general.
 1814. Status quo; "make whole" relief.
 1815. Restriction to issues, evidence, and findings.
 1816. Affirmative action; penalties.
 1817. Form and requisites.
 1818. Moot or unnecessary orders.
 1819. Parties to orders.
 1820. Construction, operation, and effect in general.
 1821. Particular relief.
 1822. — In general.
 1823. — Disclosure of information.
 1824. — Cease and desist orders.
 1825. — Restricting interference with or coercion of employees.
 1826. — Bargaining orders.
 (1). In general.

XII. LABOR RELATIONS.(Cont'd)

(2). Grounds in general.
 (3). Particular cases.
 1827. — Orders respecting employer-dominated organizations.
 (1). In general.
 (2). Disestablishment.
 (3). Reimbursement of dues.
 1828. — Reinstatement and back pay orders.
 (1). In general.
 (2). Nature and purpose of award; incidental rights.
 (3). Availability of employment.
 (4). Grounds and persons entitled in general.
 (5). Discharge because of union activities.
 (6). Striking employees.
 (7). Persons obtaining other equivalent employment.
 (8). Amount of back pay award in general.
 (9). Back pay period.
 (10). Other employment as affecting amount.
 (11). Unemployment and other benefits.
 1829. — Unfair labor practices of employees or labor organizations.
 1830. Posting of notice of order.
 1831. — In general.
 1832. — Form of notice.
 1833. Amendment or vacation of orders.

**11. CONCLUSIVENESS OF DETERMINATION
OR ORDER.**

1834. Conclusiveness of determination or order; res judicata.

**(J) JUDICIAL REVIEW AND ENFORCEMENT
OF DECISIONS OF LABOR RELATIONS
BOARDS.****1. REVIEW BY COURTS.**

1841. In general.
 1842. Constitutional and statutory provisions.
 1843. — In general.
 1844. — Purpose.
 1845. — Validity.
 1846. — Retroactive operation.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1847. What law governs.
- 1848. Preemption.
See also STATES I(B).
- 1849. Nature and form of remedy.
- 1850. Jurisdiction.
- 1851. — In general.
- 1852. — Representation proceedings.
- 1853. Decisions reviewable.
- 1854. — In general.
- 1855. — Decision of general counsel.
- 1856. — Finality; ripeness.
- 1857. — Representation proceedings.
- 1858. Presentation of objections to board.
- 1859. — In general.
- 1860. — Particular objections.
- 1861. — Excuse for failure to object.
- 1862. Right of review and parties.
- 1863. Time for proceedings.
- 1864. Record.
- 1865. Petitions, briefs and assignments of error.
- 1866. Scope and extent of review in general.
- 1867. Trial de novo.
- 1868. Presumptions and burden of proof.
- 1869. Deference to board.
- 1870. — In general.
- 1871. — Representation proceedings.
- 1872. — Remedies.
- 1873. Discretion of board.
- 1874. — In general.
- 1875. — Representation proceedings.
- 1876. — Remedies.
- 1877. Questions of law or fact; findings.
- 1878. — In general.
- 1879. — Credibility of witnesses.
- 1880. — Substantial evidence.
- 1881. — Conflicting evidence.
- 1882. — Inferences or conclusions from evidence.
- 1883. — Particular findings.
 - (1). In general.
 - (2). Intent or motive.
 - (3). Unfair labor practices in general.
 - (4). Practices of employer in general.
 - (5). Discharge.
 - (6). Practices of employee or labor organization.
 - (7). Representation proceedings.

XII. LABOR RELATIONS.(Cont'd)

- (8). Remedies.
- 1884. Harmless error.
- 1885. Determination in general.
- 1886. Modification.
- 1887. Vacation or setting aside.
- 1888. Remand to board.
- 1889. — In general.
- 1890. — Taking of additional evidence.
- 1891. — Representation proceedings.
- 1892. Further review.
- 1893. Costs and attorney fees.
- 2. ENFORCEMENT BY COURTS.**
- 1900. In general.
- 1901. Constitutional and statutory provisions.
- 1902. — In general.
- 1903. — Purpose.
- 1904. — Validity.
- 1905. — Retroactive operation.
- 1906. What law governs.
- 1907. Preemption.
See also STATES I(B).
- 1908. Jurisdiction and venue.
- 1909. Decisions enforceable.
- 1910. — In general.
- 1911. — Moot decisions; changed circumstances.
- 1912. Grounds for enforcement.
- 1913. — In general.
- 1914. — Cease and desist orders.
- 1915. — Bargaining orders.
- 1916. — Reinstatement and back pay orders.
- 1917. Defenses.
- 1918. Presentation of objections to board.
- 1919. Proceedings in general.
- 1920. Time for proceedings.
- 1921. Parties.
- 1922. Pleading.
- 1923. Record.
- 1924. Evidence.
- 1925. — In general.
- 1926. — Presumptions and burden of proof.
- 1927. — Admissibility.
- 1928. — Weight and sufficiency.
- 1929. Dismissal or withdrawal of petition.
- 1930. Hearing in general.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 1931. Scope of inquiry in general.
- 1932. Matters of discretion.
- 1933. Questions of law or fact; findings.
- 1934. — In general.
- 1935. — Credibility of witnesses.
- 1936. — Substantial evidence.
- 1937. — Conflicting evidence.
- 1938. — Inferences or conclusions from evidence.
- 1939. — Particular findings.
- 1940. Harmless error.
- 1941. Determination in general.
- 1942. Partial enforcement.
- 1943. Modification of order.
- 1944. Remand.
- 1945. — In general.
- 1946. — Taking of additional evidence.
- 1947. Judgment or order.
- 1948. Compliance with enforcement order.
- 1949. — In general.
- 1950. — Contempt.
 - (1). In general.
 - (2). Proceedings.
 - (3). Punishment.
- 1951. Review.
- 1952. Costs and attorney fees.

(K) CIVIL LIABILITIES.

- 1960. In general.
- 1961. Constitutional and statutory provisions.
- 1962. — In general.
- 1963. — Purpose.
- 1964. — Validity.
- 1965. — Retroactive operation.
- 1966. What law governs.
- 1967. Preemption.
 - See also STATES I(B).*
- 1968. Labor organizations in general.
- 1969. Acts of officers or agents in general; ratification.
- 1970. Persons liable; successor liability.
- 1971. Liability of members and officers.
- 1972. Disputes and concerted activities.
- 1973. Inducing breach of contract.
- 1974. Interference with employment in general.
- 1975. Procuring discharge.

XII. LABOR RELATIONS.(Cont'd)

- 1976. Actions by or against labor organizations or members in general.
 - 1977. — In general.
 - 1978. — Capacity to sue and be sued.
 - 1979. — Exhaustion of remedies.
 - 1980. — Jurisdiction and venue.
 - 1981. — Time to sue, limitations, and laches.
 - See also LIMITATION OF ACTIONS.*
 - 1982. — Parties; standing.
 - 1983. — Representative or class actions.
 - 1984. — Process and appearance.
 - 1985. — Pleading.
 - 1986. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 1987. — Trial.
 - 1988. — Damages.
 - 1989. — Judgment and execution.
 - 1990. — Costs and attorney fees.
 - 1991. Liability of employers or employers' organizations in general.
 - 1992. Blacklisting.
 - 1993. Service letter or statement of cause of discharge.
 - 1994. Actions against employers or employers' organizations in general.
 - 1995. — In general.
 - 1996. — Exhaustion of remedies.
 - 1997. — Jurisdiction and venue.
 - 1998. — Time to sue, limitations, and laches.
 - See also LIMITATION OF ACTIONS.*
 - 1999. — Parties; standing.
 - 2000. — Representative or class actions.
 - 2001. — Pleading.
 - 2002. — Evidence.
 - 2003. — Trial.
 - 2004. — Damages.
 - 2005. — Judgment and execution.
 - 2006. — Costs and attorney fees.
- (L) INJUNCTION.**
- 1. IN GENERAL.**
- 2010. In general.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.(Cont'd)**

- 2011. What law governs.
- 2012. Constitutional and statutory provisions.
- 2013. — In general.
- 2014. — Purpose.
- 2015. — Validity.
- 2016. — Construction and operation in general.
- 2017. — Statutes as substantive or procedural.
- 2018. Effect of other statutes.
- 2019. Retroactive application.
- 2020. Preemption.
See also STATES I(B).
- 2021. Nature and grounds of relief in general.
- 2022. Mandatory injunction.
- 2023. Other remedies or relief.
- 2024. Defenses or objections to relief.
- 2025. Conditions precedent in general; forfeiture of right to relief.
- 2026. Injunction ineffectual or not beneficial.
- 2027. Subjects of protection or relief in general.
- 2028. Internal affairs of labor organizations.
- 2029. Collective bargaining.
- 2030. Contracts.
- 2031. Contracts for closed or union shop.
- 2032. Enjoining enforcement of contracts.
- 2033. Unfair practices and unfair practice proceedings.
- 2034. Mediation, conciliation, and arbitration; attempt to settle dispute.
- 2035. Representation; proceedings.
- 2036. Courts affected.

2. DISPUTES AND CONCERTED ACTIVITIES.

- 2037. In general.
- 2038. Nature of dispute and purpose of activity.
- 2039. Existence of strike or lockout.
- 2040. Termination of employment or dispute.
- 2041. Particular disputes or purposes in general.
- 2042. Contract violations.
- 2043. Disputes as to unionization and closed shop.
- 2044. Employment or discharge.
- 2045. Race disputes.
- 2046. Unlawful purpose in general.
- 2047. Injury to or interference with business.

XII. LABOR RELATIONS.(Cont'd)

- 2048. Anti-trust law violations.
- 2049. Terms or conditions of employment.
- 2050. Wages, hours, and working conditions.
- 2051. Unwarranted demands.
- 2052. Publicity.
- 2053. Signs and banners; false and defamatory statements.
- 2054. Interference with employment.
- 2055. Inducing breach of contract.
- 2056. Refusal of or withdrawal from employment.
- 2057. Strikes and lockouts.
- 2058. Picketing.
- 2059. — In general.
- 2060. — Mode of picketing in general.
- 2061. — Place of picketing.
- 2062. Boycott of products.
- 2063. Unlawful acts in general.
- 2064. Injury to property.
- 2065. Obstructing access or seizure of property.
- 2066. Fraud.
- 2067. Inadequacy of police protection.
- 2068. Intimidation.
- 2069. Violence.
- 2070. Conditions precedent in general; forfeiture of right to relief.

3. PERSONS CONCERNED.

- 2071. In general.
- 2072. Employer-employee relationship.
- 2073. Small or owner-operated business.
- 2074. Charitable, educational, and nonprofit enterprises.
- 2075. Secondary pressures in general.
- 2076. Activity against persons other than employer in general.
- 2077. Activity by persons other than employees in general.
- 2078. Absence of dispute between employer and employees.
- 2079. Nature of dispute and purpose of activity.
- 2080. Boycott of products.
- 2081. Unionization and closed shop.
- 2082. Rival unions; jurisdictional disputes.

231H. LABOR AND EMPLOYMENT**4. PUBLIC EMPLOYMENT.**

2083. In general.

5. WRONGFUL INJUNCTION.

2084. In general.

6. PROCEEDINGS.

2085. In general.
 2086. Jurisdiction and venue.
 2087. Bond.
 2088. Time for proceedings; limitations and laches.
 2089. Parties.
 2090. — In general.
 2091. — Plaintiffs.
 2092. — Defendants.
 2093. — Representative or class actions.
 2094. Intervention; joinder.
 2095. Pleading in general.
 2096. Complaint, petition or bill.
 2097. — In general.
 2098. — Subjects of relief in general.
 2099. — Contracts.
 2100. — Unfair practices.
 2101. — Disputes and concerted activities in general.
 2102. — Unlawful acts.
 2103. — Conditions precedent to relief.
 2104. Plea or answer and subsequent pleadings.
 2105. Issues, proof and variance.
 2106. Presumptions and burden of proof.
 2107. Admissibility of evidence.
 2108. Weight and sufficiency of evidence.
 2109. — In general.
 2110. — Unfair practices.
 2111. — Disputes and concerted activities in general.
 2112. — Unlawful acts in general.
 2113. — Inadequacy of police protection.
 2114. — Nature of dispute and purpose of activity.
 2115. — Persons concerned; secondary pressures.
 2116. Dismissal before hearing.
 2117. Hearing and reference.
 2118. Findings.
 2119. Order, judgment, or decree.

7. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS IN GENERAL.

2120. In general.
 2121. Discretion of court.
 2122. Restraining orders in general.
 2123. Scope of inquiry and questions considered.
 2124. Continuing, modifying, vacating, or dissolving.
 2125. — In general.
 2126. — Grounds.
 2127. — Motions.
 2128. Order, judgment, or decree.

8. PERMANENT INJUNCTION IN GENERAL.

2129. Nature and scope of relief in general.
 2130. Persons who may be restrained.
 2131. Damages.
 2132. Writ, order, or decree.
 2133. — In general.
 2134. — Form and requisites.
 2135. — Vacating or modifying.
 2136. — Operation and effect.

9. VIOLATION AND ENFORCEMENT; CONTEMPT.

2137. In general.
 2138. Writ or mandate violated.
 2139. Conduct constituting violation.
 2140. — In general.
 2141. — Concerted activities in general.
 2142. — Violence; intimidation and threats.
 2143. Excuse and justification.
 2144. Persons involved.
 2145. — In general.
 2146. — Service or notice of injunction.
 2147. Power to punish.
 2148. Proceedings in general.
 2149. Nature and form of proceeding.
 2150. Venue.
 2151. Pleadings and affidavits.
 2152. Evidence in general.
 2153. Weight and sufficiency of evidence.
 2154. — In general.
 2155. — Picketing.
 2156. — Violence; unlawful acts.
 2157. — Knowledge or notice of injunction.
 2158. Trial or hearing.
 2159. Judgment.

231H. LABOR AND EMPLOYMENT**XII. LABOR RELATIONS.**(Cont'd)

- 2160. Punishment.
- 2161. — In general.
- 2162. — Fine.

10. REVIEW.

- 2163. In general.

11. COSTS AND ATTORNEY FEES.

- 2164. In general.

XIII. WAGES AND HOURS.

Contractual provisions as to wages, see IV. Collective bargaining agreement provisions as to wages and hours, see XII(E).

(A) IN GENERAL.

- 2170. In general.
- 2171. Constitutional and statutory provisions.
- 2172. — In general.
- 2173. — Purpose.
 - (1). In general.
 - (2). Payment of wages.
- 2174. — Validity.
 - (1). In general.
 - (2). Payment of wages.
- 2175. — Retroactive operation.
- 2176. What law governs.
- 2177. Preemption.

See also STATES I(B).
- 2178. Payment of wages in general.
- 2179. Time of payment.
- 2180. — In general.
- 2181. — What are wages.
- 2182. — Payment on termination of employment.
- 2183. — Demand for payment.
- 2184. Medium of payment.
- 2185. Basis and measure of compensation.
- 2186. Deduction and forfeiture.
- 2187. — In general.
- 2188. — Union dues.
- 2189. — Kickbacks.
- 2190. Tipping.
- 2191. Administrative powers and proceedings.
- 2192. Actions.
- 2193. — In general.
- 2194. — Conditions precedent.
- 2195. — Defenses.

XIII. WAGES AND HOURS.(Cont'd)

- 2196. — Jurisdiction and venue.
 - 2197. — Time to sue and limitations.

See also LIMITATION OF ACTIONS.
 - 2198. — Parties; standing.
 - 2199. — Pleading.
 - 2200. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 2201. — Trial.
 - 2202. — Damages.
 - (1). In general.
 - (2). Exemplary damages.
 - (3). Double or treble damages; liquidated damages.
 - 2203. — Penalties.
 - (1). In general.
 - (2). Amount of penalties.
 - 2204. — Costs and attorney fees.
- (B) MINIMUM WAGES AND OVERTIME PAY.**
- 1. IN GENERAL.**
- 2210. In general.
 - 2211. Power to regulate.
 - 2212. — In general.
 - 2213. — Public works or employment.
 - 2214. — Women and minors.
 - 2215. Constitutional and statutory provisions.
 - 2216. — In general.
 - 2217. — Purpose.
 - (1). In general.
 - (2). Fair Labor Standards Act.
 - (3). Portal-to-Portal Act.
 - 2218. — Validity.
 - (1). In general.
 - (2). Federal statutes in general.
 - (3). State statutes in general.
 - (4). Persons and employments regulated.
 - (5). Newspapers.
 - (6). Public works and employment.
 - (7). Carriers.
 - (8). Women and minors.
 - (9). Amount and form of wages.
 - (10). Portal-to-portal pay.
 - (11). Actions and injunctions.

231H. LABOR AND EMPLOYMENT**XIII. WAGES AND HOURS.(Cont'd)**

- 2219. — Retroactive operation.
- 2220. — Construction.
 - (1). In general.
 - (2). Strict or liberal construction.
- 2221. What law governs.
- 2222. Preemption.
See also STATES I(B).
- 2223. Municipal or county ordinances.

**2. PERSONS AND EMPLOYMENTS
WITHIN REGULATIONS.**

- 2224. In general.
- 2225. Employment relationship.
- 2226. Employers included.
- 2227. — In general.
- 2228. — Joint or multiple employers.
- 2229. — Suffering or permitting to work.
- 2230. — Supervisory personnel.
- 2231. Employees included.
- 2232. — In general.
- 2233. — Particular employees.
- 2234. Independent contractors.
- 2235. — In general.
- 2236. — Persons in particular employ-
ments.
- 2237. Homeworkers and pieceworkers.
- 2238. Employments included in general.
- 2239. Public employment; public works.
- 2240. — In general.
- 2241. — Municipal employment in gener-
al.
- 2242. — Police officers and firefighters.
- 2243. — Public contracts, work under.
- 2244. Prisoners and detainees.
- 2245. Women and minors.
- 2246. Trainees, interns, and apprentices.
- 2247. Workers with disabilities.

3. EXEMPTIONS.

- 2250. In general.
- 2251. Strict or liberal construction of exemp-
tions.
- 2252. Particular exemptions in general.
- 2252.5. Highly compensated employees.
- 2253. Executive and administrative employ-
ees.
- 2254. — In general.
- 2255. — Definitions and tests of status in
general.

XIII. WAGES AND HOURS.(Cont'd)

- 2256. — Wage administrator's regulations
in general.
- 2257. — Particular employments.
- 2258. — Accountants, bookkeepers, cash-
iers, and other office workers.
- 2259. — Engineers.
- 2260. — Expeditors and inspectors.
- 2261. — Forepersons in general.
- 2262. — Managers, supervisors, etc.
- 2263. — Shipping clerks.
- 2264. — Salaried status.
 - (1). In general.
 - (2). Deductions from pay.
 - (3). Window of correction.
- 2264.5. — Highly compensated employees.
- 2265. Professional employees.
- 2266. — In general.
- 2267. — Particular employees.
- 2268. Outside salespersons.
- 2269. Retail or service establishments.
- 2270. Seamen.
- 2271. Fish or seafood, employment related
to.
- 2272. Agricultural employees.
- 2273. — In general.
- 2274. — Particular operations and com-
modities in general.
- 2275. — Nurseries, greenhouses, and flow-
er gardens.
- 2276. — Sugar.
- 2277. Processing agricultural products.
- 2278. — In general.
- 2279. — Particular products and opera-
tions in general.
- 2280. — Dairy products.
- 2281. — Fruits and vegetables.
- 2282. — Sugar production.
- 2283. — Area of production.
- 2284. Domestic or companionship services.
- 2285. Carriers.
- 2286. — In general.
- 2287. — Particular employees in general.
- 2288. — Air carriers' employees.
- 2289. — Railroad employees.
- 2290. — Motor carriers' employees.
 - (1). In general.
 - (2). Duties affecting safety or opera-
tion.

231H. LABOR AND EMPLOYMENT**XIII. WAGES AND HOURS.(Cont'd)**

- (3). Particular employees in general.
- (4). Drivers.
- (5). Loaders.
- (6). Mechanics.
- (7). Private and contract carriers.
- 2291. Seasonal, periodic, or intermittent employment.
- 2292. Governmental bodies.
 - (1). In general.
 - (2). Particular employments.
 - (3). Contractors performing government work.

4. OPERATION AND EFFECT OF REGULATIONS.

- 2295. In general.
- 2296. Violation of regulations and liability in general.
- 2297. Contracts.
 - Contracts for compensation generally, see IV.*
- 2298. — In general.
- 2299. — Incorporation of regulations.
- 2300. — Collective bargaining agreements.
 - Collective bargaining agreements generally, see XII(E).*
- 2301. — Compliance with or violation of regulations.
- 2302. — Effect of violation.
- 2303. Minimum wages.
- 2304. Prevailing wages.
- 2305. Overtime pay in general.
- 2306. Computation of wage and overtime rates in general.
- 2307. Regular rate.
- 2308. Piecework.
- 2309. Bonus in general.
- 2310. Differential for night or holiday work.
- 2311. Working time.
- 2312. — In general.
- 2313. — Work week.
- 2314. — Time not actually at work in general.
- 2315. — Portal-to-portal time in general.
- 2316. — Preliminary or postliminary activities in general.
- 2317. — Waiting, resting, or sleeping time.
- 2318. — Meal or break periods.
- 2318.5. — Donning and doffing: changing apparel and gear.
- 2319. — Travel time.
- 2320. — On-call time.

XIII. WAGES AND HOURS.(Cont'd)

- 2321. Time and mode of payment.
- 2322. — In general.
- 2323. — Deductions from wages in general.
- 2324. — Board, lodging or other facilities furnished.
- 2325. — Tips.
- 2326. Increase or reduction of wages.
- 2327. Waiver and estoppel.
- 2328. Accord and satisfaction.
- 2329. Compromise and settlement.
- 2330. Release.
- 2331. Records and reports.
- 2332. — In general.
- 2333. — Duty to keep records.
- 2334. — Requisites of records.
- 2335. — Inspection of records.

5. ADMINISTRATIVE POWERS AND PROCEEDINGS.

- 2336. In general.
- 2337. Administrative boards and officers.
- 2338. Rules and regulations.
- 2339. Investigations in general.
- 2340. Subpoenas.
- 2341. — In general.
- 2342. — Enforcement.
- 2343. Industry committees.
- 2344. Proceedings.
- 2345. — In general.
- 2346. — Notice.
- 2347. — Evidence.
- 2348. — Hearing.
- 2349. — Findings.
- 2350. — Orders.
 - (1). In general.
 - (2). Requisites and validity.
 - (3). Construction and operation.
 - (4). Modification.
- 2351. Administrative review.
- 2352. Judicial review and enforcement.
- 2353. — In general.
- 2354. — Decisions reviewable.
- 2355. — Proceedings for review.
- 2356. — Presentation and reservation of grounds for review.
- 2357. — Scope of review.
- 2358. — Determination.
- 2359. — Further review.

231H. LABOR AND EMPLOYMENT**6. ACTIONS.**

- 2361. In general.
- 2362. Nature and form of remedy.
- 2363. Conditions precedent.
- 2364. Defenses.
- 2365. — In general.
- 2366. — Reliance on administrative ruling or policy.
- 2367. Jurisdiction and venue.
- 2368. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 2369. — In general.
- 2370. — Limitations applicable in general.
- 2371. — Willful violations.
- 2372. Parties; standing.
- 2373. Actions on behalf of others in general.
- 2374. — In general.
- 2375. — Employees similarly situated.
- 2376. — Authority to sue.
- 2377. — Class actions.
- 2377.5. — Notice and opting-in.
- 2378. Pleading.
- 2379. — In general.
- 2380. — Complaint, petition, or declaration.
 - (1). In general.
 - (2). Exemptions.
 - (3). Overtime claim in general.
 - (4). Portal-to-portal pay.
 - (5). Actions on behalf of others.
- 2381. — Plea or answer.
- 2382. — Issues, proof, and variance.
- 2383. Evidence.
- 2384. — In general.
- 2385. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Overtime in general.
 - (3). Working time.
 - (4). Persons and employments within regulations in general.
 - (5). Exemptions.
 - (6). — In general.
 - (7). — Executive, administrative, or professional employees.
 - (8). — Other particular exemptions.
- 2386. — Admissibility.
- 2387. — Weight and sufficiency.
 - (1). In general.

XIII. WAGES AND HOURS.(Cont'd)

- (2). Minimum wages.
 - (3). Prevailing wages.
 - (4). Overtime in general.
 - (5). Computation of overtime rate.
 - (6). Working time.
 - (7). Persons and employments within regulations in general.
 - (8). Exemptions.
 - (9). — In general.
 - (10). — Executive, administrative, or professional employees.
 - (11). Defenses.
 - 2388. Damages and amount of recovery.
 - 2389. — In general.
 - 2390. — Liquidated damages.
 - (1). In general.
 - (2). Nature and purpose in general.
 - (3). Mandatory nature.
 - (4). Good faith; reasonable grounds.
 - (5). Payment or tender of wages due.
 - 2391. — Computation.
 - 2392. — Interest.
 - 2393. — Amount awarded.
 - 2394. — Evidence.
 - 2395. Trial.
 - 2396. — In general.
 - 2397. — Questions of law or fact.
 - (1). In general.
 - (2). Exemptions.
 - (3). Working time.
 - 2398. — Instructions.
 - 2399. — Verdict and findings.
 - 2400. Judgment.
 - 2401. Costs and attorney fees.
 - 2402. — In general.
 - 2403. — Attorney fees in general.
 - 2404. — Defenses.
 - 2405. — Amount.
 - 2406. — Proceedings.
 - 2407. Penalties.
 - 2408. — In general.
 - 2409. — Actions for penalties in general.
 - 2410. — Amount of penalties.
- 7. INJUNCTIONS.**
- 2413. In general.
 - 2414. Substantial or incidental nature of injury.

231H. LABOR AND EMPLOYMENT**XIII. WAGES AND HOURS.(Cont'd)**

- 2415. Discretion of court.
- 2416. Existence of other remedy.
- 2417. Grounds and subjects of relief.
- 2418. — In general.
- 2419. — Intention to violate.
- 2420. — Prevailing wages.
- 2421. — Overtime pay.
- 2422. — Failure to keep records.
- 2423. — Injunction against enforcement of regulations.
- 2424. Defenses.
- 2425. Cessation of violation.
- 2426. Proceedings.
- 2427. — In general.
- 2428. — Jurisdiction and venue.
- 2429. — Parties; standing.
- 2430. — Persons who may be restrained.
- 2431. — Pleading.
- 2432. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 2433. Trial.
- 2434. Order or judgment.
- 2435. Preliminary and interlocutory injunctions.
- 2436. Permanent injunction or other relief.
- 2437. — In general.
- 2438. — Scope of injunction.
- 2439. — Alternative or additional relief.
- 2440. Costs and attorney fees.
- 2441. Operation and effect of injunction.
- 2442. Violation and enforcement.
- 2443. — In general.
- 2444. — Contempt.

(C) EQUAL PAY.

- 2450. In general.
- 2451. Constitutional and statutory provisions.
- 2452. — In general.
- 2453. — Purpose.
- 2454. — Validity.
- 2455. — Retroactive operation.
- 2456. What law governs.
- 2457. Preemption.

*See also STATES I(B).***XIII. WAGES AND HOURS.(Cont'd)**

- 2458. Persons and employments within regulations.
- 2459. Exemptions.
- 2460. Discrimination in general.
- 2461. — In general.
- 2462. — Disparity in pay.
- 2463. — Equal work; skill, effort, and responsibility.
- 2465. Exception or justification.
- 2466. — In general.
- 2467. — Seniority system; job experience.
- 2468. — Merit system; job rating system.
- 2469. — Measuring earnings by quantity or quality of production.
- 2470. — Shift differential.
- 2471. Administrative powers and proceedings in general.
- 2472. Actions.
- 2473. — In general.
- 2474. — Nature and form of remedy.
- 2475. — Conditions precedent.
- 2476. — Defenses.
- 2477. — Jurisdiction and venue.
- 2478. — Time to sue and limitations.
 - See also LIMITATION OF ACTIONS.*
 - (1). In general.
 - (2). Limitations applicable in general.
 - (3). Willful violations.
- 2479. — Parties; standing.
- 2480. — Pleading.
- 2481. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - (5). — In general.
 - (6). — Disparity in pay.
 - (7). — Equal work; skill, effort, and responsibility.
 - (8). — Exception or justification; seniority or merit system.
- 2482. — Damages and amount of recovery.
 - (1). In general.
 - (2). Liquidated damages.
 - (3). Interest.
 - (4). Amount awarded.

231H. LABOR AND EMPLOYMENT**XIII. WAGES AND HOURS.(Cont'd)**

- 2483. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
 - 2484. — Judgment.
 - 2485. — Costs and attorney fees.
 - (1). In general.
 - (2). Attorney fees.
 - 2486. — Injunctions.
 - (1). In general.
 - (2). Proceedings for injunction.
 - (3). Violation and enforcement.
- (D) HOURS OF SERVICE.**
- 2490. In general.
 - 2491. Power to regulate.
 - 2492. Constitutional and statutory provisions.
 - 2493. — In general.
 - 2494. — Purpose.
 - 2495. — Validity.
 - (1). In general.
 - (2). Particular employees in general.
 - (3). Women.
 - (4). Minors.
 - (5). Public employees.
 - 2496. — Retroactive operation.
 - 2497. — Construction in general.
 - 2498. What law governs.
 - 2499. Preemption.
See also STATES I(B).
 - 2500. Employments subject to regulations.
 - 2501. Persons subject to regulations.
 - 2502. Exemptions.
 - 2503. Day of rest.
 - 2504. Operation and effect of regulations.
 - 2505. — In general.
 - 2506. — Police officers and firefighters.
 - 2507. — Railroad employees.
 - 2508. — Motor carriers' employees.
 - 2509. — Commencement and duration of service.
 - 2510. — Continuity of service.
 - 2511. Matters excusing violations.
 - 2512. — In general.
 - 2513. — Emergencies.
 - 2514. — Unavoidable accident or casualty.
 - 2515. — Mistake or lack of knowledge.

XIII. WAGES AND HOURS.(Cont'd)

- 2516. Contracts covering hours of services.
 - 2517. Persons liable for violations.
 - 2518. Records and reports.
 - 2519. Administrative powers and proceedings in general.
 - 2520. Actions and injunctions.
- (E) OFFENSES AND PROSECUTIONS.**
- 2521. In general.
 - 2522. Constitutional and statutory provisions.
 - 2523. Preemption.
See also STATES I(B).
 - 2524. Offenses.
 - 2525. — In general.
 - 2526. — Failure to pay required wages.
 - 2527. — False or inadequate records.
 - 2528. — Kickbacks.
 - 2529. — Computation and payment of wages.
 - 2530. — Persons liable.
 - 2531. — Defenses.
 - 2532. Prosecutions.
 - 2533. — In general.
 - 2534. — Indictment, information, or complaint.
 - 2535. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 2536. — Trial.
 - 2537. — Sentence and punishment.

**XIV. SAFETY AND HEALTH REGULATION
IN GENERAL.***See XV for mine safety. See XVII for tort liability.*

- 2551. In general.
- 2552. What law governs.
- 2553. Constitutional and statutory provisions.
- 2554. — In general.
- 2555. — Purpose.
- 2556. — Validity.
- 2557. — Retroactive application.
- 2558. Concurrent or conflicting statutes or regulations.
- 2559. — In general.
- 2560. — Federal preemption.
See also STATES I(B).

231H. LABOR AND EMPLOYMENT**XIV. SAFETY AND HEALTH REGULATION
IN GENERAL.**(Cont'd)

2561. — State preemption of local laws and actions.
See also STATES I(B).
2562. Employers and industries regulated in general.
2563. — In general.
2564. — Agriculture.
2565. — Construction sites.
2566. — Home work.
2567. — Manufacturing.
2568. — Railroads.
2569. — Seamen and wharves; vessels.
2570. Persons protected.
2571. Regulatory agencies.
2572. Regulations.
2573. — In general.
2574. — Notice.
2575. — Comment.
2576. — Delay.
2577. General duty.
2578. Industry standards.
2579. Technological feasibility.
2580. Economic feasibility.
2581. Exposure in general.
2582. Chemicals; fumes; vapors; gases.
2583. Dust and particulates.
2584. Personal safety devices, equipment or clothing.
2585. Noise.
2586. Machines and equipment; structures.
2587. — In general.
2588. — Safety guards.
2589. — Maintenance.
2590. — Guard rails.
2591. — Safety harnesses.
2592. — Safety nets.
2593. — Scaffolding.
2594. — Flooring.
2595. Ventilation.
2596. Trenches, ditches, etc.
2597. Building maintenance.
2598. Training; supervision; warnings.
2599. Sanitation.
2600. Inspections.
2601. Investigations.
2602. Records; reports.
2603. Right of action.

**XIV. SAFETY AND HEALTH REGULATION
IN GENERAL.**(Cont'd)

2604. Penalties; enforcement.
2605. — In general.
2606. — Serious, willful or repeated violations.
2607. — Persons liable or responsible.
2608. — Particular violations.
- (1). In general.
- (2). Exposure.
- (3). Machines and equipment; structures.
- (4). Construction.
- (5). Building maintenance.
2609. Procedure.
2610. — In general.
2611. — Evidence.
- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
2612. — Judicial review.
2613. Costs and attorney fees.

XV. MINES.*See XVII for tort liability.***(A) IN GENERAL.**

2620. In general.
2621. What law governs.
2622. Constitutional and statutory provisions.
2623. — In general.
2624. — Purpose.
2625. — Validity.
2626. — Retroactive application.
2627. Concurrent or conflicting regulations.
2628. — In general.
2629. — Federal preemption.
See also STATES I(B).
2630. — State preemption.
See also STATES I(B).
2631. Employers and industries covered.
2632. Administrative review.
2633. Persons protected.
2634. Agencies.
2635. Regulations in general.
2636. — In general.
2637. — Notice.
2638. — Comment.
2639. — Delay.

231H. LABOR AND EMPLOYMENT**XV. MINES.**(Cont'd)

- 2640. Industry standards.
- 2641. Technological feasibility.
- 2642. Economic feasibility.
- 2643. Duty in general.
- 2644. Exposure; in general.
- 2645. Chemicals; fumes; vapors; gases.
- 2646. Dust and particulates.
- 2647. Personal safety devices, equipment or clothing.
- 2648. Noise.
- 2649. Machines and equipment; structures.
- 2650. — In general.
- 2651. — Safety guards.
- 2652. — Maintenance.
- 2653. — Guard rails.
- 2654. — Safety harnesses.
- 2655. — Safety nets.
- 2656. — Scaffolding; ladders.
- 2657. — Temporary flooring.
- 2658. Trenches.
- 2659. Ventilation.
- 2660. Sanitation.
- 2661. Inspections.
- 2662. Training; supervision; warning.
- 2663. Investigations.
- 2664. Records; reports.
- 2665. Right of action.
- 2666. Penalties; enforcement.
- 2667. — In general.
- 2668. — Persons liable or responsible.
- 2669. — Serious, willful or repeated violations.
- 2670. — Particular violations.
 - (1). In general.
 - (2). Exposure.
 - (3). Machines and equipment; structures.
 - (4). Building maintenance.
- 2671. Procedure.
- 2672. — In general.
- 2673. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 2674. — Review.
- 2675. Costs and attorney fees.
- 2676. Radiation exposure.

(B) PNEUMOCONIOSIS; BLACK LUNG BENEFITS.

- 2680. In general.
- 2681. Eligibility.
- 2682. — In general.
- 2683. — Survivor benefits.
- 2684. Proceedings in general.
- 2685. Evidence.
- 2686. — In general.
- 2687. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Irrebuttable presumption.
- 2688. — Weight and sufficiency.
 - (1). In general.
 - (2). X-ray evidence.
 - (3). Pulmonary function tests.
 - (4). Treating physician.
- 2689. Determination.
- 2690. — In general.
- 2691. — Conclusiveness.
- 2692. Amount.
- 2693. Payment.
- 2694. Rehearing.
- 2695. Administrative review.
- 2696. Modification.
- 2697. Judicial review.
- 2698. Costs and attorney fees.

XVI. AGRICULTURAL LABOR.

Issues specific to agricultural labor, see also XII. See XIII for wage and hour issues of general applicability.

- 2700. In general.
- 2701. Constitutional and statutory provisions.
- 2702. — In general.
- 2703. — Purpose.
- 2704. — Validity.
- 2705. — Retroactive application.
- 2706. What law governs.
- 2707. Preemption.

See also STATES I(B).
- 2708. Employees covered; agricultural, seasonal or migratory employment.
- 2709. — In general.
- 2710. — Incidental activities; cannery or processing work.
- 2711. — Nonfood production; forestry.
- 2712. Employers.
- 2713. — In general.
- 2714. — Exemptions.
- 2715. — Joint employers.

231H. LABOR AND EMPLOYMENT**XVI. AGRICULTURAL LABOR.(Cont'd)**

- 2716. Labor contractors.
- 2717. — In general.
- 2718. — Who are contractors; exemptions.
 - (1). In general.
 - (2). Compensation or fees.
- 2719. Disclosure and record-keeping requirements.
- 2720. Certification; duty to inquire.
- 2721. Housing and working conditions.
- 2722. Liability for non-compliance; intent.
- 2723. — In general.
- 2724. — Persons liable.
- 2725. Regulatory agencies and officers.
- 2726. — In general.
- 2727. — Inspection and investigation.
- 2728. Proceedings.
- 2729. — In general.
- 2730. — Evidence.
- 2731. — Relief; penalties, damages and costs.

XVII. EMPLOYER'S LIABILITY TO EMPLOYEES.**(A) IN GENERAL.****1. NATURE AND SCOPE OF EMPLOYER'S DUTY.**

- 2750. In general.
- 2751. Constitutional and statutory provisions.
- 2752. — In general.
- 2753. — Purpose.
- 2754. — Validity.
- 2755. — Retroactive operation.
- 2756. What law governs.
- 2757. Preemption.
See also STATES I(B).
- 2758. Elements of recovery.
- 2759. — In general.
- 2760. — Employer-employee relationship.
- 2761. — Negligence.
- 2762. — Compensable injury.
- 2763. Relationship between parties.
- 2764. — In general.
- 2765. — Independent contractors.
- 2766. — Volunteers.
- 2767. — Injuries to those acting under direction of defendant's employee.
- 2768. — Traffic arrangements and contracts between employers.

XVII. EMPLOYER'S LIABILITY TO EMPLOYEES.(Cont'd)

- 2769. — Scope of employment.
- 2770. — Commencement, suspension or termination of relation.
- 2771. Existence of duty on part of employer.
- 2772. — In general.
- 2773. — Common carriers.
- 2774. — Interstate commerce by railroad.
- 2775. — Special relationship between employer and employee.
 - (1). In general.
 - (2). Existence of relationship, and corresponding duty.
 - (3). Standard of care.
- 2776. Nature and scope of duty owed by employer.
- 2777. — In general.
- 2778. — What constitutes negligence by employer.
- 2779. Breach of duty.
- 2780. Proximate cause.
- 2781. — In general.
- 2782. — Foreseeability; remoteness.
- 2783. Nature of compensable injury.
- 2784. Liability as insurer; relationship to workers' compensation.
- 2785. Violation of statute as evidence of negligence.
- 2786. Willful injury by employer.
- 2787. Medical attendance on employee.
- 2788. Unlawful employment or services.
- 2789. Joint liability of employers and others.
- 2790. Contracts extending, limiting, or releasing liability.
- 2791. — In general.
- 2792. — Contracts entered prior to injury.
- 2793. — Contracts entered subsequent to injury.

2. ACTIONS IN GENERAL.

- 2800. In general.
- 2801. Nature and form of remedy.
- 2802. Constitutional and statutory provisions.
- 2803. Grounds and conditions precedent in general.
- 2804. Notice of injury.
- 2805. Jurisdiction and venue.
- 2806. Time to sue and limitations.
- 2807. Parties; standing.

231H. LABOR AND EMPLOYMENT**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2808. Pleading.
- 2812. Issues, proof, and variance.
- 2813. — In general.
- 2814. — Matters to be proved.
- 2815. — Issues raised by and evidence admissible under pleadings.
- 2816. — Variance between allegations and proof.
- 2817. Presumptions and burden of proof.
- 2818. Discovery.
- 2819. Admissibility of evidence.
- 2820. Weight and sufficiency of evidence.
- 2821. Damages.
- 2822. — In general.
- 2823. — Elements of compensation.
- 2824. — Amount awarded.
- 2825. — Exemplary damages.
- 2826. — Instructions.
- 2827. Conduct of trial.
- 2828. Questions of law or fact.
- 2829. Instructions.
- 2830. Verdict, findings, and judgment.
- 2830.5. Costs and fees.

**(B) WORKING CONDITIONS AND METHODS
OF PERFORMING WORK.**

- 2831. In general.
- 2832. Nature and scope of duty owed by employer.
- 2833. Constitutional and statutory provisions.
- 2834. — In general.
- 2835. — Purpose.
- 2836. — Validity.
- 2837. — Retroactive operation.
- 2838. Employers covered by statutory provisions.
- 2839. Rules and orders as to performance of work.
- 2840. Sufficiency of workforce.
- 2841. Kind of equipment.
- 2842. — In general.
- 2843. — Newest, safest, and best equipment.
- 2844. — Uniform character of equipment.
- 2845. — Degree of care required in general.
- 2846. — Degree of care required in operation of railroads.

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2847. — Care required dependent on knowledge and experience of employee.
- 2848. Delegation of duty.
- 2849. Custom and usage.
- 2850. Equipment or places owned, controlled, or provided by third persons.
- 2851. — In general.
- 2852. — Locomotives and railroad cars.
- 2853. — Railroad tracks and roadbeds.
- 2854. — Obstructions or structures on, over, or near railroad tracks.
- 2855. Working conditions; defective equipment in general.
- 2856. Equipment and places inherently dangerous.
- 2857. Covering or guarding dangerous machinery or places.
- 2858. Inspection and testing.
- 2859. Knowledge by employer of defect or danger.
- 2860. Opportunity to remedy defects.
- 2861. Failure to repair or negligence in repairing defects.
- 2862. Locomotives and railroad cars.
- 2863. Railroad tracks and roadbeds.
- 2864. Obstructions or structures on, over, or near railroad tracks.
- 2865. Walkways and passages used in work.
- 2866. Buildings.
- 2867. Platforms, scaffolds, ladders, and supports.
- 2868. Derricks, elevators, hoistways, and shafts.
- 2869. Methods of performing work.
- 2870. — In general.
- 2871. — Employer's acquiescence in method or practice of work.
- 2872. — Inherently dangerous work.
- 2873. — Assignment of employees in general.
- 2874. — Operation of railroads.
- 2875. — Other particular operations.
- 2876. Acts in emergencies.
- 2877. Proximate cause.
- 2878. Pleading.
- 2879. Presumptions and burden of proof.
- 2880. Admissibility of evidence.

231H. LABOR AND EMPLOYMENT**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2881. Weight and sufficiency of evidence.
- 2882. Questions of law or fact.
- 2883. — In general.
- 2884. — Rules and orders.
- 2885. — Tools, equipment, and machinery.
- 2886. — Locomotives and railroad cars.
- 2887. — Railroad tracks and roadbeds.
- 2888. — Obstructions or structures on,
over, or near railroad tracks.
- 2889. — Walkways and places for work.
- 2890. — Buildings.
- 2891. — Platforms, scaffolds, ladders, and
supports.
- 2892. — Elevators, derricks, cranes, hoist-
ing apparatus, and shafts.
- 2893. — Electrical apparatus and struc-
tures.
- 2894. — Inspections and testing.
- 2895. — Knowledge by employer of defect
or danger.
- 2896. — Precautions against injury in gen-
eral.
- 2897. Instructions.

(C) WARNINGS REGARDING WORK PERFORMED.

- 2900. In general.
- 2901. Duty to warn.
- 2902. Delegation of duty to warn.
- 2903. Employee's level of experience.
- 2904. Youthful employees.
- 2905. Dangers or defects known to employee.
- 2906. Obvious dangers.
- 2907. Dangers from extraneous sources.
- 2908. Particular operations.
- 2909. — In general.
- 2910. — Sufficiency and effect of warnings
in general.
- 2911. — Operation of railroad.
- 2912. — Other particular operations.
- 2913. Acts in emergencies.
- 2914. Proximate cause.
- 2915. Pleading.
- 2916. Presumptions and burden of proof.
- 2917. Admissibility of evidence.
- 2918. Weight and sufficiency of evidence.
- 2919. Questions of law or fact.
- 2920. Instructions.

(D) FELLOW EMPLOYEES.

- 2921. In general.
- 2922. Supervision, hiring, and retention.
- 2923. Competency.
- 2924. Negligence as ground of liability.
- 2925. Statutory provisions limiting fellow
servant doctrine.
- 2926. Nature of act and performance of
duties of employer.
- 2927. Executives and other representatives of
employer.
- 2928. Employees in different departments of
business.
- 2929. Existence of relation of employer and
employee in general.
- 2930. Employees of separate employers in
same work.
- 2931. Fellow employee not on duty.
- 2932. Nature of common service.
- 2933. Concurrent negligence of employer and
fellow employee.
- 2934. Willful acts and gross negligence of
fellow employees.
- 2935. — In general.
- 2936. — Assaults.
- 2937. — Sexual misconduct.
*Recovery for emotional distress arising from sexual
misconduct, see DAMAGES.*
- 2938. Pleading.
- 2939. Presumptions and burden of proof.
- 2940. Admissibility of evidence.
- 2941. Weight and sufficiency of evidence.
- 2942. Questions of law or fact.
- 2943. Instructions.

(E) RISKS ASSUMED BY EMPLOYEE.

- 2944. In general.
- 2945. Constitutional and statutory provisions.
- 2946. — In general.
- 2947. — Purpose.
- 2948. — Validity.
- 2949. — Retroactive operation.
- 2950. Applicability of assumption of risk; ab-
rogation of doctrine.
- 2951. Reliance on care of employer.
- 2952. Dangers incident to nature of work.
- 2953. Working conditions.
- 2954. — In general.
- 2955. — Methods of performing work.
- 2956. — Tools, machinery, or equipment.

231H. LABOR AND EMPLOYMENT**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2957. — Places for work.
- 2958. Inadequate rules or direction of work.
- 2959. Sufficiency of workforce.
- 2960. Fellow employees.
- 2961. Dangers or defects known to employee.
- 2962. Inexperienced or youthful employee.
- 2963. Obvious dangers.
- 2964. Notice or complaint to employer.
- 2965. Promise by employer to remedy defect or remove danger.
- 2966. Disobedience of rules or orders.
- 2967. Compliance with commands or threats.
- 2968. Proximate cause.
- 2969. Risk outside scope of employment.
- 2970. Concurrent negligence of employer.
- 2971. Pleading.
- 2972. Presumptions and burden of proof.
- 2973. Admissibility of evidence.
- 2974. Weight and sufficiency of evidence.
- 2975. Questions of law or fact.
- 2976. Instructions.

**(F) CONTRIBUTORY NEGLIGENCE;
DIMINUTION OF DAMAGES.**

- 2977. In general.
- 2978. Constitutional and statutory provisions.
- 2979. — In general.
- 2980. — Purpose.
- 2981. — Validity.
- 2982. — Retroactive operation.
- 2983. Applicability of contributory negligence; abrogation of doctrine.
- 2984. Care required of employee.
- 2985. Inexperienced or youthful employee.
- 2986. Reliance on care of employer.
- 2987. Scope of employment.
- 2988. Working conditions and methods of performing work.
- 2989. — In general.
- 2990. — Methods of performing work.
- 2991. — Tools, machinery, or equipment.
- 2992. — Places for work.
- 2993. Disobedience of rules or orders.
- 2994. Disregarding warnings or signals.
- 2995. Compliance with commands or threats.
- 2996. Acts in emergencies.
- 2997. Proximate cause.

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2998. Injury avoidable by care of employer.
- 2999. Willful injury by employee.
- 3000. Pleading.
- 3001. Presumptions and burden of proof.
- 3002. Admissibility of evidence.
- 3003. Weight and sufficiency of evidence.
- 3004. Questions of law or fact.
- 3005. — In general.
- 3006. — Working conditions and methods of performing work.
- 3007. — Disobedience of rules or orders.
- 3008. — Disregarding warnings or signals.
- 3009. — Compliance with commands or threats.
- 3010. — Proximate cause of injury.
- 3011. — Injury avoidable by care of employer.
- 3012. Instructions.

**XVIII. RIGHTS AND LIABILITIES
AS TO THIRD PARTIES.****(A) IN GENERAL.**

- 3020. In general.
- 3021. What law governs.
- 3022. Constitutional and statutory provisions.
- 3023. Preemption.
See also STATES I(B).

(B) ACTS OF EMPLOYEE.**1. IN GENERAL.**

- 3025. In general.
- 3026. Nature of liability in general.
- 3027. Theory and purpose of imposing liability on employer.
- 3028. Relation of parties.
- 3029. — In general.
- 3030. — Particular cases.
- 3031. — Direction and control.
 - (1). In general.
 - (2). Specific activity.
- 3032. — Commencement of relationship.
- 3033. — Termination of relationship.
- 3034. — Owner.
- 3035. — Lessor-lessee.
- 3036. — Supervisor as employer.
- 3037. — Multiple employers in general.
- 3038. — Borrowed servants.

231H. LABOR AND EMPLOYMENT**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- (1). In general.
- (2). Particular cases.
- 3039. Negligent hiring.
- 3040. — In general.
- 3041. — Dangerous propensities.
- 3042. Negligent retention.
- 3043. Negligent training and supervision.
- 3044. Scope of employment.
- 3045. — In general.
- 3046. — Furtherance of employer's business.
- (1). In general.
- (2). Dual purpose.
- (3). Particular cases.
- 3047. — Departures in general.
- 3048. — Particular cases involving departures.
- 3049. — Authority.
- (1). In general.
- (2). Express authority of employer.
- (3). Implied authority.
- (4). Particular cases.
- 3050. Notice to or knowledge of employee.
- 3051. Negligence in general.
- 3052. — In general.
- 3053. — Particular cases.
- 3054. Intentional acts.
- 3055. — In general.
- 3056. — Assault and battery.
- (1). In general.
- (2). Particular cases.
- 3057. — Libel and slander.
- 3058. — Trespass.
- 3059. — Fraud; misrepresentation.
- 3060. — Other particular intentional acts.
- 3061. — Act by employee on employee's behalf.
- (1). In general.
- (2). Particular cases.
- 3062. Criminal acts.
- 3063. Ratification.
- 3064. — In general.
- 3065. — Nature and grounds.
- 3066. — Acts capable of ratification.
- 3067. — Capacity of employer.
- 3068. — Knowledge of acts.
- 3069. — Express ratification.

**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 3070. — Implied ratification.
 - 3071. — Ratification in part.
 - 3072. — Retraction of ratification.
 - 3073. Liability of employee.
 - 3074. — In general.
 - 3075. — Particular cases.
 - 3076. — To fellow employees.
 - 3077. Joint and several liability.
- 2. ACTIONS.**
- 3078. In general.
 - 3079. Right of action.
 - 3080. Nature and form of remedy.
 - 3081. Conditions precedent.
 - 3082. Defenses.
 - 3083. Jurisdiction and venue.
 - 3084. Time to sue and limitations.
 - 3085. Parties; standing.
 - 3086. Pleading.
 - 3087. — In general.
 - 3088. — Employment relationship.
 - 3089. — Scope of employment.
 - (1). In general.
 - (2). Intentional acts.
 - 3090. — Negligence of employee.
 - 3091. — Defenses.
 - 3092. Evidence.
 - 3093. — In general.
 - 3094. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Employment relationship.
 - (3). Scope of employment.
 - (4). — In general.
 - (5). — Intentional acts.
 - 3095. — Admissibility.
 - 3096. — Weight and sufficiency.
 - (1). In general.
 - (2). Negligent hiring, retention, and supervision.
 - (3). Employment relationship.
 - (4). — In general.
 - (5). — Borrowed servants.
 - (6). Scope of employment.
 - (7). — In general.
 - (8). — Intentional acts.
 - (9). — Other particular cases.

231H. LABOR AND EMPLOYMENT**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- (10). Negligence of employee.
- (11). Defenses.
- 3097. Damages and amount of recovery.
- 3098. — In general.
- 3099. — Computation and amount.
- 3100. — Punitive or exemplary damages.
 - (1). In general.
 - (2). Intentional acts.
- 3101. — Interest.
- 3102. — Evidence.
- 3103. Trial.
- 3104. — In general.
- 3105. — Questions of law or fact.
 - (1). In general.
 - (2). Negligent hiring, retention, and supervision.
 - (3). Employment relationship.
 - (4). — In general.
 - (5). — Borrowed servants.
 - (6). Scope of employment.
 - (7). — In general.
 - (8). — Intentional acts.
 - (9). — Other particular cases.
 - (10). Negligence of employee.
 - (11). Defenses.
- 3106. — Instructions.
 - (1). In general.
 - (2). Employment relationship.
 - (3). Scope of employment.
- 3107. — Verdict and findings.
 - (1). In general.
 - (2). Inconsistent verdicts.
- 3108. Judgment.
- 3109. Costs and attorney fees.

(C) WORK OF INDEPENDENT CONTRACTOR.

- 3125. In general.
- 3126. Particular cases in general.
- 3127. — In general.
- 3128. — Construction cases.
- 3129. — Railroad cases.
- 3130. Nature of employer's liability.
- 3131. Exceptions to general rule, in general.
- 3132. Negligent selection, hiring, or retention.
- 3133. Non-delegable duty.
- 3134. — In general.
- 3135. — Particular cases.

**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 3136. Determination of status in general.
- 3137. — In general.
- 3138. — Construction cases.
- 3139. — Special franchise or privilege.
- 3140. Extent of control.
- 3141. — In general.
- 3142. — Construction cases.
- 3143. — Other particular cases.
- 3144. Supervision.
- 3145. Inspection.
- 3146. Defective plan.
- 3147. Defective methods.
- 3148. Defective tools or equipment.
- 3149. Warnings and precautions.
- 3150. — In general.
- 3151. — Particular cases.
- 3152. Work done contrary to direction of employer.
- 3153. Work entailing wrongful conduct directed by employer.
- 3154. Necessary or natural consequences of work.
- 3155. — In general.
- 3156. — Peculiar risk doctrine.
 - (1). In general.
 - (2). Particular cases.
- 3157. — Other particular cases.
- 3158. Hazardous work.
- 3159. — In general.
- 3160. — Construction cases.
- 3161. — Blasting and explosives.
- 3162. — Other particular cases.
- 3163. Nuisance.
- 3164. Work completed or abandoned.
- 3165. Nature of compensable injuries.
- 3166. — In general.
- 3167. — Personal.
- 3168. — Economic; property damage.
- 3169. Actions.
- 3170. — In general.
- 3171. — Right of action.
- 3172. — Nature and form of remedy.
- 3173. — Conditions precedent.
- 3174. — Defenses.
- 3175. — Jurisdiction and venue.
- 3176. — Time to sue and limitations.
- 3177. — Parties; standing.

231H. LABOR AND EMPLOYMENT**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 3178. — Pleading.
- 3179. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 3180. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation and amount.
 - (3). Punitive or exemplary damages.
 - (4). Interest.
 - (5). Evidence.
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 - (1). In general.
 - (2). Questions of law or fact.
 - (3). — In general.
 - (4). — Independent contractor status.
 - (5). — Control.
 - (6). — Hazardous work and peculiar risks.
 - (7). Instructions.
 - (8). Verdict and findings.
- 3182. — Judgment.
- 3183. — Costs and attorney fees.

**XIX. NOTICE OF TERMINATION;
RETRAINING.****(A) IN GENERAL.**

- 3201. In general.
- 3202. Constitutional and statutory provisions.
- 3203. — In general.
- 3204. — Purpose.
- 3205. — Validity.
- 3206. — Retroactive operation.
- 3207. Regulations in general.
- 3208. Preemption.
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- 3209. Employers.
- 3210. — In general.
- 3211. — Creditors.
- 3212. — Parent subsidiary relationship.
- 3213. — Management firms.
- 3214. — Joint employers.
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**XIX. NOTICE OF TERMINATION;
RETRAINING.(Cont'd)**

- 3216. Applicability of statutes and regulations.
- 3217. — In general; employment loss.
- 3218. — Number of employees.
- 3219. — Closings.
- 3220. — Mass layoffs.
- 3221. — Sales.
- 3222. — Multiple sites.
- 3223. Notice of employment loss.
- 3224. — In general.
- 3225. — Necessity.
- 3226. — Time.
- 3227. — Adequacy; sufficiency.

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- 3230. In general.
- 3231. Nature and form of remedy.
- 3232. Defenses.
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- 3234. Time to sue and limitations.
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- 3237. Parties; standing.
- 3238. Pleading.
- 3239. Evidence.
- 3240. — In general.
- 3241. — Presumptions and burden of proof.
- 3242. — Admissibility.
- 3243. — Weight and sufficiency.
- 3244. Damages and amount of recovery.
- 3245. — In general.
- 3246. — Computation and amount in general.
- 3247. — Good faith; mitigation.
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- 3262. — In general.
- 3263. — Purpose.
- 3264. — Validity.
- 3265. — Retroactive application.
- 3266. Preemption.
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- 3268. Offenses.
- 3269. — In general.
- 3270. — Misuse or misappropriation of union funds.
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- 3284. Trial.
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233. LANDLORD AND TENANT

SUBJECTS INCLUDED

- Nature and incidents of estates for years and tenancies from year to year, at will, or at sufferance
- Leases and agreements for the occupation of real property in general

233. LANDLORD AND TENANT

Relation between the parties to such leases and agreements, and their rights and liabilities as between themselves and as to others incident to such relation

Rent control and stabilization

Public housing

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Class actions, see **FEDERAL CIVIL PROCEDURE** and **PARTIES**

Common law writs of entry, see **ENTRY, WRIT OF**

Condominiums and cooperative apartments, see **COMMON INTEREST COMMUNITIES**

Eviction in non-lease contexts, see **EJECTMENT, MORTGAGES AND DEEDS OF TRUST, REAL PROPERTY CONVEYANCES, PROPERTY IV, and COMMON INTEREST COMMUNITIES**

Federal preemption of state legislation, see **STATES** ⇨18.39

Fixtures, see **PROPERTY VI**

Ground rents, see **PROPERTY III(C)5**

Ground rents, see **ESTATES IN PROPERTY**

Housing discrimination, see **CIVIL RIGHTS** ⇨1077

Indemnity, see **INDEMNITY**

Indians or tribes, issues peculiar to, see **INDIANS** ⇨176

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Leases of personal property, see **BAILMENT**

Mechanics' liens, see **MECHANICS' LIENS**

Particular classes of persons, leases of property of, see **CORPORATIONS AND BUSINESS ORGANIZATIONS, INFANTS, MENTAL HEALTH, and other specific topics**

Particular species of property, leases of, see **MINES AND MINERALS, RAILROADS, WATER LAW, and other specific topics**

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Taxation, see INTERNAL REVENUE and TAXATION

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(B) CONSTRUCTION AND OPERATION, ¶590–619.

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4. REQUISITES AND VALIDITY OF ASSIGNMENTS AND SUBLETTINGS, ¶760–769.

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- 500. In general.
- 501. Nature of the relation.
- 502. What law governs.
- 503. Constitutional and statutory provisions.
- 504. Preemption.
- 505. Property which may be leased.
- 506. Express contract in general.
- 507. — In general.
- 508. — Board and lodging.
- 509. Implied tenancy.
- 510. — In general.
- 511. — Joint tenants and tenants in common.
- 512. — Vendor and purchaser.
- 513. — Occupancy incident to employment.
- 514. — Occupancy under void lease.
- 515. — Occupancy under agreement for lease.
- 516. — Occupancy without agreement.
- 517. Attornment.
- 518. Disclaimer or disavowal of relation.
- 519. Estoppel to deny relation.
- 520. Evidence as to relation.
- 521. — In general.

233. LANDLORD AND TENANT**I. CREATION AND EXISTENCE OF
THE RELATION.(Cont'd)**

- 522. — Presumptions and burden of proof.
- 523. — Admissibility.
- 524. — Weight and sufficiency.
- 525. Questions of law or fact.
- 526. Criminal interference with relation by third persons.

II. LEASES AND AGREEMENTS IN GENERAL.**(A) REQUISITES AND VALIDITY.**

- 530. In general.
- 531. Nature of the contract.
- 532. What law governs.
- 533. Existence and condition of property.
- 534. Agreements for leases.
- 535. — In general.
- 536. — Lease or agreement for lease.
- 537. — Performance or breach of agreement.
- 538. — Actions.
- 539. — Damages for breach of agreement.
- 540. Parol agreements.
- 541. Form and contents of lease and validity in general.
- 542. — In general.
- 543. — Unconscionability; adhesion contracts.
- 544. — Parties.
- 545. — Property.
- 546. — Actions.
- 547. Execution.
- 548. Seal.
- 549. Stamp.
- 550. Offer and acceptance.
- 551. — In general.
- 552. — Delivery.
- 553. — Meeting of minds; mistake.
- 554. — Actions.
- 555. Consideration.
- 556. Recording lease or contract.
- 557. Fraud.
- 558. — In general.
- 559. — Concealment.
- 560. — Actions.
- 561. Legality of object.
- 562. — In general.
- 563. — Exculpatory clauses.

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IN GENERAL.(Cont'd)**

- 564. — Sale of controlled substances or intoxicating liquor.
- 565. — Gaming.
- 566. — Tax evasion.
- 567. — Actions.
- 568. Limitation of term.
- 569. Estoppel or waiver as to defects or objections.
- 570. Ratification of defective or invalid lease or contract.
- 571. Modifications or amendments.
- 572. Rescission and cancellation.
- 573. — In general.
- 574. — Grounds.
- 575. — Conditions precedent to rescission.
- 576. — Time for rescission and laches.
- 577. — Acts constituting rescission.
- 578. — Actions.
- 579. Right to contest validity.

(B) CONSTRUCTION AND OPERATION.

- 590. In general.
- 591. Existence of ambiguity.
- 592. What law governs.
- 593. Intention of parties.
- 594. Construction against drafter.
- 595. Reasonable construction.
- 596. Ordinary or technical language.
- 597. Written terms as controlling.
- 598. Construction as a whole.
- 599. Conflicting terms.
- 600. Preliminary negotiations and oral agreements.
- 601. Construing instruments together.
- 602. Existing law as part of contract.
- 603. Construction by parties.
- 604. Parties to lease or contract.
- 605. Place and time.
- 606. Conditions.
- 607. Time as of the essence of the contract.
- 608. Modifications or amendments.
- 609. Entire or severable contracts.
- 610. Evidence.
- 611. Questions of law or fact.

233. LANDLORD AND TENANT**III. LANDLORD'S TITLE AND REVERSION.****(A) RIGHTS AND POWERS OF LANDLORD.**

- 620. In general.
- 621. Title and possession to sustain lease.
- 622. Authority and control over demised premises.
- 623. Nature of reversion.
- 624. Transfer of reversion.
- 625. — In general.
- 626. — Restrictions on transfer.
- 627. — Rights and liabilities of grantee or assignee.
- 628. Rights of action against third persons.
- 629. Injuries to reversion.
- 630. — In general.
- 631. — Discarded materials and cleanliness.
- 632. — Environmental damage.
- 633. — Fire.
- 634. — Waste.
- 635. — Waiver and estoppel.
- 636. — Actions.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Admissibility.
 - (9). — Weight and sufficiency.
 - (10). Trial.
 - (11). — In general.
 - (12). — Questions of law or fact.
 - (13). — Instructions.
 - (14). Remedies.
 - (15). — In general.
 - (16). — Damages.
 - (17). — Costs and attorney fees.
- 637. — Criminal responsibility.
- 638. Possession of tenant as possession of landlord.
- 639. — In general.
- 640. — Effect of surrender or attornment by tenant to adverse claimant.
- 641. Assignment of rent.
- 642. — In general.
- 643. — Rights and liabilities of assignees.

III. LANDLORD'S TITLE AND REVERSION.(Cont'd)

- 644. Conveyance to tenant.
- 645. — In general.
- 646. — Merger.

(B) ESTOPPEL OF TENANT.

- 650. In general.
- 651. Leases and agreements as ground of estoppel.
- 652. — In general.
- 653. — Estoppel as dependent on validity of lease.
- 654. — Estoppel as dependent on validity of landlord's title.
- 655. — Tenant in possession at time relation arose.
- 656. — Tenant holding over.
- 657. Operation of estoppel against tenant.
- 658. — In general.
- 659. — Actions in which estoppel is effective.
- 660. — Necessity of surrendering possession to discharge ground of estoppel.
- 661. — Sufficiency of surrender.
- 662. — Denial of title as to part of property.
- 663. — Time as to which estoppel is effective.
- 664. Persons estopped.
- 665. Persons as to whom tenant is estopped.
- 666. Adverse possession of tenant.
- 667. — In general.
- 668. — Necessity of surrender of premises by tenant or repudiation of tenancy and notice.
- 669. — Character of tenant's possession.
- 670. Purchase of tax title.
- 671. Attornment to third person.
- 672. Effect of eviction by landlord.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.**(A) NATURE AND EXTENT.****1. ESTATE FOR YEARS.**

- 680. In general.
- 681. Commencement.
- 682. Duration.

233. LANDLORD AND TENANT**2. PERIODIC TENANCIES.**

- 690. In general.
- 691. Commencement.
- 692. Duration.
- 693. Creation.
- 694. — In general.
- 695. — Tenancy from year to year.
 - (1). In general.
 - (2). Parol or invalid leases or contracts.
 - (3). Tenant holding over after expiration of term.
- 696. — Tenancy from month to month.
 - (1). In general.
 - (2). Parol or invalid leases or contracts.
 - (3). Tenant holding over after expiration of term.

3. TENANCIES AT WILL AND AT SUFFERANCE.

- 700. In general.
- 701. Commencement.
- 702. Duration.
- 703. Creation of tenancy at will.
- 704. — In general.
- 705. — Occupancy under agreement indefinite as to term.
- 706. — Parol or invalid leases.
- 707. — Tenant holding over after expiration of term.
- 708. Creation of tenancy at sufferance.
- 709. — In general.
- 710. — Tenant holding over after expiration of term.

(B) ASSIGNMENT AND SUBLETTING.**1. IN GENERAL.**

- 720. In general.
- 721. Assignability and agreements to assign leases and contracts.
- 722. Right to assign or sublet in general.
- 723. — In general.
- 724. — Statutory prohibition.

2. RESTRICTIONS AS TO ASSIGNMENT OR SUBLETTING.

- 730. In general.
- 731. What constitutes breach of covenant.
- 732. Consent of lessor, and waiver thereof.
- 733. — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- 734. — Reasonableness.
- 735. — Waiver.
- 736. Actions.
- 737. — In general.
- 738. — Time to sue and limitations.
- 739. — Parties.
- 740. — Pleading.
- 741. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 742. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 743. — Remedies.
 - (1). In general.
 - (2). Damages.
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3. PAROL ASSIGNMENTS AND SUBLETTINGS.

- 750. In general.

4. REQUISITES AND VALIDITY OF ASSIGNMENTS AND SUBLETTINGS.

- 760. In general.
- 761. Delivery of assignment.
- 762. Necessity of record.

5. CONSTRUCTION AND OPERATION OF ASSIGNMENTS.

- 770. In general.
- 771. Rights and liabilities of assignee.
- 772. Rights and liabilities of assignor.
- 773. Assignment as security.
- 774. Actions.
- 775. — In general.
- 776. — Time to sue and limitations.
- 777. — Parties.
- 778. — Pleading.
- 779. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.

233. LANDLORD AND TENANT**IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)**

780. — Trial.
 (1). In general.
 (2). Questions of law or fact.
 (3). Instructions.

781. — Remedies.
 (1). In general.
 (2). Damages.
 (3). Costs and attorney fees.

6. CONSTRUCTION AND OPERATION OF SUBLEASES.

790. In general.
 791. Term.
 792. Liability of sublessor to landlord.
 793. Liability of sublessor to sublessee.
 794. Liability of landlord or sublessor to third parties.
 795. Rights and liabilities of sublessees.
 796. Actions.
 797. — In general.
 798. — Time to sue and limitations.
 799. — Parties.
 800. — Pleading.
 801. — Evidence.
 (1). In general.
 (2). Presumptions and burden of proof.
 (3). Admissibility.
 (4). Weight and sufficiency.
 802. — Trial.
 (1). In general.
 (2). Questions of law or fact.
 (3). Instructions.
 803. — Remedies.
 (1). In general.
 (2). Damages.
 (3). Costs and attorney fees.

(C) MORTGAGE OF LEASEHOLD.

820. In general.
 821. Rights of mortgagee.
 822. Rights of purchaser at foreclosure sale.
 823. Recording and filing.

(D) EXTENSIONS AND RENEWALS.

830. In general.
 831. Covenants for extension or renewal.
 832. — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

833. — Requisites and sufficiency.
 834. — Conditions precedent to right to extend or renew.
 (1). In general.
 (2). Forfeiture of right to renewal.
 835. — Security for renewal.
 836. — Exercise of extension or renewal option.
 (1). In general.
 (2). Notice of election.
 (3). — In general.
 (4). — Form and sufficiency.
 (5). — Time.
 (6). — Implied or presumed notice.
 (7). — Waiver of notice.
 (8). — Effect of failure.
 (9). Proceedings to fix amount of rent.
 837. Persons entitled to renewal.
 838. — In general.
 839. — Assignees or undertenants.
 840. Persons bound by agreements to renew.
 841. Number of renewals.
 842. Perpetual or continual renewals.
 843. Renewal leases.
 844. — In general.
 845. — Covenants and conditions.
 846. — Evidence of renewal.
 847. Extension or renewal by endorsement on lease.
 848. Implied contracts to extend or renew in general.
 849. Holding over, extension or renewal by.
 850. — In general.
 851. — Conditions in general.
 852. — Term.
 853. — What constitutes holding over.
 854. — Landlord's right of election to consider holding over as a renewal.
 855. Effect of extension or renewal.
 856. Actions.
 857. — In general.
 858. — Time to sue and limitations.
 859. — Parties.
 860. — Pleading.
 861. — Evidence.
 (1). In general.

233. LANDLORD AND TENANT**IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)**

- (2). Presumptions and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 862. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 863. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.
- (E) OPTION TO PURCHASE PREMISES.**
- 870. In general.
- 871. Statutory rights.
- 872. — In general.
- 873. — Exercise of purchase option.
- 874. — Assignee's rights.
- 875. — Actions and remedies.
- 876. Covenants.
 - 877. — In general.
 - 878. — Existence, scope, and validity.
 - 879. — Conditions precedent.
 - 880. — Price.
 - 881. — Exercise of purchase option.
 - (1). In general.
 - (2). Form and sufficiency.
 - (3). Time.
 - 882. — Assignee's rights.
 - 883. — Surrender, forfeiture, or waiver.
 - 884. — Breach of agreement.
 - (1). In general.
 - (2). Effect.
 - 885. — Actions.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Admissibility.
 - (9). — Weight and sufficiency.
 - (10). Trial.
 - (11). — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- (12). — Questions of law or fact.
- (13). — Instructions.
- (14). Remedies.
- (15). — In general.
- (16). — Damages.
- (17). — Costs and attorney fees.
- (F) TERMINATION.**
- 1. IN GENERAL.**
- 890. In general.
- 891. Constitutional and statutory provisions.
- 892. Option to cancel.
- 893. — In general.
- 894. — Periodic tenancy.
- 895. — Tenancy at will.
- 896. — Tenancy at sufferance.
- 897. Expiration of term.
- 898. Death of lessee.
- 899. Transfer or termination of landlord's estate.
- 900. — In general.
- 901. — Death or disability of landlord.
- 902. Merger of tenancy in general.
- 903. Purchase under option.
- 904. Creation of new tenancy.
- 905. Eviction.
- 906. Appropriation of premises to public use.
- 907. Injury to or destruction of premises.
- 908. Insolvency or bankruptcy.
- 909. Forfeiture by wrongful act of tenant.
- 2. BREACH OF COVENANT OR CONDITION.**
- 910. In general.
- 911. Equitable considerations.
- 912. Who may take advantage of breach.
- 913. Breach by lessor.
- 914. Assigning or subletting.
- 915. Use of premises.
- 916. Failure to repair or remedy defects.
- 917. Nonpayment of taxes or assessments.
- 918. Insurance.
- 919. Improvements.
- 920. Nonpayment of rent.
- 921. — In general.
- 922. — Necessity of demand.
- 923. — Effect of tender of rent.

233. LANDLORD AND TENANT**3. VACATION, SURRENDER, OR ABANDONMENT OF PREMISES.**

- 930. In general.
- 931. Covenants and agreements.
- 932. Surrender by cotenant or sublessor.
- 933. Acceptance.
- 934. Surrender of keys.
- 935. Person to whom surrender may be made.
- 936. Assignment; substitution of tenants.
- 937. Operation and effect.

4. WAIVER OF FORFEITURE.

- 940. In general.
- 941. Acceptance of rent.
- 942. Enforcing payment of rent by legal proceedings.

5. LANDLORD'S NOTICE OF TERMINATION.

- 950. In general.
- 951. Necessity.
- 952. Time.
- 953. — In general.
- 954. — Periodic tenancies.
- 955. — Tenancies at will and at sufferance.
- 956. Sufficiency.
- 957. — In general.
- 958. — Service.
- 959. Waiver of notice.
- 960. Vitiating of notice already given.

6. TENANT'S NOTICE OF INTENTION TO QUIT.

- 970. In general.
- 971. Waiver.
- 972. Vitiating of notice already given.

7. ACTIONS.

- 980. In general.
- 981. Time to sue and limitations.
- 982. Parties.
- 983. Pleading.
- 984. Evidence.
- 985. — In general.
- 986. — Presumptions and burden of proof.
- 987. — Admissibility.
- 988. — Weight and sufficiency.
 - (1). In general.
 - (2). Breach of covenant or condition.
 - (3). Vacation, surrender, or abandonment of premises.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- (4). Notice.
- 989. Trial.
- 990. — In general.
- 991. — Questions of law or fact.
- 992. — Instructions.
- 993. Remedies.
- 994. — In general.
- 995. — Damages.
- 996. — Costs and attorney fees.

V. ENJOYMENT AND USE OF PREMISES.**(A) COVENANTS IN GENERAL.**

- 1000. In general.
- 1001. Restrictive covenants.
- 1002. Covenants running with the land.
- 1003. Dependent and independent clauses.
- 1004. Breach of covenant.
- 1005. — In general.
- 1006. — Anticipatory breach.
- 1007. — Substantial or partial performance.
- 1008. — Delay in performance.
- 1009. — Excuses.
- 1010. — Acceptance or waiver.
- 1011. — Discharge.
- 1012. Particular kinds of covenants.
- 1013. — In general.
- 1014. — Powers reserved to or surrendered by lessor.
- 1015. — Related properties.
 - (1). In general.
 - (2). Supporting businesses.
 - (3). Competing businesses.
- 1016. — Financing, fees, and costs in general.
- 1017. — Exculpatory clauses.
- 1018. — Implied covenants.
 - (1). In general.
 - (2). Good faith and fair dealing.
- 1019. Consequences of breach.
- 1020. — In general.
- 1021. — Tort or contract liability.
- 1022. — Criminal responsibility.
- 1023. Actions.
- 1024. — In general.
- 1025. — Demand.
- 1026. — Time to sue and limitations.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1027. — Parties.
- 1028. — Pleading.
- 1029. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1030. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1031. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(B) DESCRIPTION, EXTENT, AND CONDITION.

- 1040. In general.
- 1041. Sufficiency of description.
- 1042. Extent of premises.
- 1043. Property included in general.
- 1044. Appurtenances.
- 1045. — In general.
- 1046. — Means of entrance or exit.
- 1047. — Parking.
- 1048. — Utilities.
- 1049. Tenantable condition of premises.
- 1050. — In general.
- 1051. — Statutory regulations in general.
- 1052. — Warranty of habitability.
- 1053. — Suitability or fitness of premises.
- 1054. — Actions.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial.
 - (5). Damages and costs.
- 1055. Crimes and prosecutions.

(C) POSSESSION.

- 1060. In general.
- 1061. Duty of tenant to take possession.
- 1062. Right of entry and possession of tenant.
- 1063. Delivery of possession.
- 1064. — In general.

**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1065. — Waiver of failure to deliver possession.
- 1066. Actions for failure to deliver possession.
- 1067. — In general.
- 1068. — Pleading.
- 1069. — Evidence.
- 1070. — Damages.
- 1071. — Questions for jury.
- 1072. Right of quiet enjoyment.
- 1073. — In general.
- 1074. — Statutory rights.
- 1075. — Express and implied covenants.
- 1076. — What constitutes breach of covenant.
- 1077. — Actions.
 - (1). In general.
 - (2). Evidence.
 - (3). Trial.
 - (4). Damages and costs.
- 1078. Disturbance of possession of tenant.
- 1079. — In general.
- 1080. — By landlord.
 - (1). In general.
 - (2). Actions.
 - (3). — In general.
 - (4). — Evidence.
 - (5). — Trial.
 - (6). — Damages and costs.
- 1081. — By third persons.
 - (1). In general.
 - (2). Liability of landlord.
 - (3). Actions.
 - (4). — In general.
 - (5). — Evidence.
 - (6). — Trial.
 - (7). — Damages and costs.
- 1082. Use of premises.
- 1083. — In general.
- 1084. — Purpose for which premises may be used.
- 1085. — Mode of use.
 - (1). In general.
 - (2). Restrictions in lease.
- 1086. — Rights, duties, and liabilities of sub-lessees or assignees.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

1087. — Interference with use by landlord or others.
 (1). In general.
 (2). Restrictive covenants.
1088. — Actions.
 (1). In general.
 (2). Evidence.
 (3). Trial.
 (4). Damages and costs.
1089. Cultivation of land under farm leases.
1090. — In general.
1091. — Rights and duties of tenant in general.
1092. — Timber.
1093. — Manure.
1094. — Crops.
 (1). In general.
 (2). Right or title to crops in general.
 (3). Right to way-going crop.
 (4). Tenant of land subject to judgment lien.
 (5). Injury to crop.
 (6). Action to recover value.
1095. Injuries to premises.
1096. — In general.
1097. — By landlord.
1098. — By third persons.
 (1). In general.
 (2). Injuries to grass and crops.
 (3). Obstruction of light.
 (4). Obstruction of way.
 (5). Liability of landlord.
 (6). Actions in general.
 (7). Damages.
 (8). Right of tenant to abate nuisance.
1099. Duty of tenant to surrender on termination of lease.
- (D) INCUMBRANCES, TAXES, AND ASSESSMENTS.**
1100. In general.
1101. Covenants against incumbrances.
1102. Duty to remove or discharge incumbrances.
1103. Taxes and assessments.
1104. — In general.
1105. — Covenants and agreements.
 (1). In general.

**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- (2). What taxes or assessments are within the covenant.
 (3). Liability of assignees.
 (4). Actions for breach.
1106. Liabilities for taxes and assessments.
- (E) REPAIRS, MAINTENANCE, AND ALTERATIONS.**
1110. In general.
1111. Landlord's right of entry to maintain or repair.
1112. Rights of subtenants.
1113. Right of tenant to maintain or repair at landlord's cost.
1114. Statutory provisions.
1115. Covenants and agreements as to maintenance, repairs, and alterations.
1116. — In general.
1117. — Consideration.
1118. — Construction and operation in general.
1119. — Nature of maintenance or repairs covered.
1120. — Right of landlord to notice that maintenance or repairs are necessary.
1121. — Agreement by landlord to pay for maintenance or repairs.
1122. — Rights and liabilities of assignees and subtenants.
1123. — Waiver of claims or stipulations.
1124. — Right of tenant to maintain or repair and recover cost.
1125. — Alterations by tenant.
1126. — Duty to rebuild on destruction of property.
1127. — Mode of maintenance or repair.
1128. Boundaries and fences.
1129. Duty to rebuild on destruction of property.
1130. Actions for failure to maintain, repair, or alter.
1131. — In general.
1132. — Demand.
1133. — Time to sue and limitations.
1134. — Parties; standing.
1135. — Pleading.
1136. — Defenses.
1137. — Evidence.
 (1). In general.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF PREMISES.(Cont'd)**

- (2). Presumptions and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 1138. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1139. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(F) INSURANCE.

- 1140. In general.
- 1141. Constitutional, statutory, and regulatory provisions.
- 1142. Validity and construction.
- 1143. Breach.
- 1144. Actions.
- 1145. — In general.
- 1146. — Time to sue and limitations.
- 1147. — Parties; standing.
- 1148. — Pleading.
- 1149. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1150. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1151. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(G) IMPROVEMENTS AND COVENANTS THEREFOR.

- 1160. In general.
- 1161. Lessor's consent.
- 1162. Covenant by lessee to make improvements.
- 1163. Improvements by landlord and covenants therefor.
- 1164. Ownership of improvements in general.

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- 1165. Right to remove and agreements for removal of improvements.
- 1166. Forfeiture or waiver of right to remove improvements.
- 1167. Right to compensation in general.
- 1168. Covenants and agreements to pay for improvements.
- 1169. Liabilities of successors of lessor.
- 1170. Mode of termination of tenancy as affecting right to compensation.
- 1171. Actions.
- 1172. — In general.
- 1173. — Parties.
- 1174. — Pleading.
- 1175. — Evidence.
- 1176. — Trial.
- 1177. — Remedies.
 - (1). In general.
 - (2). Lien for value of improvements.
 - (3). Damages.
 - (4). Costs and attorney fees.

(H) CONDITION OF PREMISES AT TERMINATION OF TENANCY.

- 1180. In general.
- 1181. Covenants and agreements as to condition of premises on termination of tenancy.
- 1182. Duty of tenant to rebuild or replace personal property.
- 1183. Actions.
- 1184. — In general.
- 1185. — Time to sue and limitations.
- 1186. — Parties; standing.
- 1187. — Pleading.
- 1188. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1189. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1190. — Remedies.
 - (1). In general.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- (2). Damages.
- (3). Costs and attorney fees.

**(I) PERSONAL PROPERTY ON PREMISES
AT TERMINATION OF TENANCY.**

- 1200. In general.
- 1201. Care of property left on premises by outgoing tenant.
- 1202. Actions.
- 1203. — In general.
- 1204. — Evidence.
- 1205. — Trial.
- 1206. — Remedies.

**(J) LIABILITY FOR DANGEROUS OR
DEFECTIVE CONDITIONS.****1. IN GENERAL.**

- 1210. In general.
- 1211. Statutory and regulatory provisions.

2. EXISTENCE OF DUTY OF CARE.

- 1220. In general.
- 1221. Landlord's duty.
- 1222. — In general.
- 1223. — Ownership, custody, and control.
- 1224. — Knowledge or notice in general.
 - (1). In general.
 - (2). Constructive notice.
 - (3). Knowledge or notice of injured party.
- 1225. — Conditions created or known by defendant.
- 1226. — Foreseeability.
- 1227. — Voluntarily assumed duty.
 - (1). In general.
 - (2). Contractual duty.
- 1228. — Duty based on statute or other regulation.
 - (1). In general.
 - (2). Safe workplace laws.
- 1229. — Duty as to children.
- 1230. — Duty to inspect or discover.
- 1231. — Protection against acts of third persons.
- 1232. — Duty to warn.
- 1233. — Duty to repair.
- 1234. — Public and common areas.
- 1235. — Strict liability.

**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1236. — Duration and termination of duty.
- 1237. — Public housing authorities.
- 1238. Duty of managing agent.
- 1239. Duty of former owners of property.
- 1240. Tenant's duty.
- 1241. — In general.
- 1242. — Voluntarily assumed duty.
 - (1). In general.
 - (2). Contractual duty.
- 1243. Duty based on status of plaintiff.
- 1244. — In general.
- 1245. — Tenants or occupants.
- 1246. — Employees of tenant.
- 1247. — Subtenants.
- 1248. — Third persons.
- 1249. Breach of duty.

3. STANDARD OF CARE.

- 1250. In general.
- 1251. Not insurer or guarantor.
- 1252. Reasonable or ordinary care in general.
- 1253. Reasonably safe or unreasonably dangerous conditions.
- 1254. Protection against acts of third persons in general.
- 1255. Standard established by statute or other regulation.
- 1256. Vulnerable persons.

4. PROXIMATE CAUSE.

- 1260. In general.
- 1261. Necessity.
- 1262. Requisites, definitions, and distinctions.

5. NECESSITY OF INJURY.

- 1270. In general.

6. PARTICULAR CONDITIONS.

- 1280. In general.
- 1281. Doors, entryways, and exits.
- 1282. Windows.
- 1283. Halls and passageways.
- 1284. Floors.
- 1285. — In general.
- 1286. — Inequalities in surface.
- 1287. — Rugs, carpets, and mats.
- 1288. — Water and other substances.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF PREMISES.(Cont'd)**

- 1289. Steps, stairs, and ramps.
- 1290. — In general.
- 1291. — Substances and objects.
- 1292. — Handrails.
- 1293. Walls and paint.
- 1294. Basements and cellars.
- 1295. Attics.
- 1296. Roofs and ceilings.
- 1297. Elevators and escalators.
- 1298. Decks, balconies, and patios.
- 1299. Furniture, shelves, displays, carts, and other accessories.
- 1300. Utilities.
- 1301. — In general.
- 1302. — Water.
- 1303. — Gas and electricity.
- 1304. — Heating, ventilation, and cooling.
- 1305. Machinery and appliances.
- 1306. Public and common areas.
- 1307. — In general.
- 1308. — Lobbies; vestibules.
- 1309. — Building facades.
- 1310. — Walkways, paths, and outbuildings.
- 1311. — Parking lots, driveways, and alleys.
- 1312. — Yards and lawns.
- 1313. — Trees.
- 1314. Lighting.
- 1315. Swimming pools and hot tubs.
- 1316. Bodies of water and beaches.
- 1317. Snow and ice.
- 1318. Excavations, holes, drop-offs, and shafts.
- 1319. Ladders and scaffolds.
- 1320. Smoke and fire.
- 1321. Animals.
- 1322. Acts of third persons.
- 1323. Injuries to property.
- 1324. — In general.
- 1325. — Property of tenants.
- 1326. — Property of third persons.

7. NUISANCES.

- 1330. In general.
- 1331. Liability of landlord.
- 1332. Liability of tenant.

8. DEFENSES AND MITIGATING CIRCUMSTANCES.

- 1340. In general.
- 1341. Notice to or knowledge of injured party as to defects.
- 1342. Conduct or fault of injured party.
- 1343. Fault of third person.
- 1344. Assumption of risk.
- 1345. Waiver of duty.

9. ACTIONS.

- 1350. In general.
- 1351. Conditions precedent.
- 1352. Time to sue and limitations.
- 1353. Parties; standing.
- 1354. Pleading.
- 1355. Evidence.
- 1356. — In general.
- 1357. — Presumptions and burden of proof.
- 1358. — Admissibility.
- 1359. — Weight and sufficiency.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1360. Trial.
- 1361. — In general.
- 1362. — Questions of law or fact.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1363. — Instructions.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1364. — Verdict and findings.
- 1365. Remedies.
- 1366. — In general.
- 1367. — Damages.
- 1368. — Costs and attorney fees.

(K) CONSTRUCTIVE OR PARTIAL EVICTION.

- 1370. In general.
- 1371. Nature of eviction.

233. LANDLORD AND TENANT**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1372. — In general.
- 1373. — Prior possession of tenant as necessary element.
- 1374. — Necessity of abandonment by tenant.
- 1375. Act or omission of landlord.
- 1376. — In general.
- 1377. — Interference with beneficial use or enjoyment of premises.
- 1378. — Failure of landlord to repair.
- 1379. — Entry by landlord to repair or improve.
- 1380. Acts of third persons in general.
- 1381. Entry under title paramount.
- 1382. Appropriation of premises to public use.
- 1383. Injury to or destruction of premises.
- 1384. Action by landlord to recover possession.
- 1385. Eviction of assignee or sublessee.
- 1386. Waiver by tenant.
- 1387. Recovery of possession by tenant.
- 1388. Actions.
- 1389. — In general.
- 1390. — Demand.
- 1391. — Parties.
- 1392. — Pleading.
- 1393. — Defenses.
- 1394. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1395. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1396. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

**VI. DEPOSITS AND OTHER SECURITY
BY TENANT.**

- 1400. In general.
- 1401. Constitutional and statutory provisions.
- 1402. Duty to give.

**VI. DEPOSITS AND OTHER SECURITY
BY TENANT.(Cont'd)**

- 1403. Duty to hold.
- 1404. Duty to return.
- 1405. — In general.
- 1406. — Cause to retain.
- 1407. Interest.
- 1408. Actions.
- 1409. — In general.
- 1410. — Time to sue and limitations.
- 1411. — Parties.
- 1412. — Pleading.
- 1413. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1414. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1415. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

VII. RENT.**(A) RIGHTS AND LIABILITIES.****1. IN GENERAL.**

- 1420. Nature of rent.
- 1421. Constitutional and statutory provisions.
- 1422. Covenants and agreements to pay rent.
- 1423. — In general.
- 1424. — Performance or breach.
- 1425. Implied agreements to pay rent.

**2. PARTICULAR GROUNDS OF DISCHARGE
FROM LIABILITY.**

- 1430. In general.
- 1431. Illegal lease.
- 1432. Satisfaction of conditions precedent.
- 1433. Frustration of purpose.
- 1434. Failure to give or take possession.
- 1435. Disturbance of possession of tenant.
- 1436. — In general.
- 1437. — By landlord.
- 1438. — By third parties.
- 1439. Condition of premises.

233. LANDLORD AND TENANT**VII. RENT.**(Cont'd)

- 1440. — In general.
- 1441. — Unhealthy premises.
- 1442. — Heating, ventilation, and air conditioning.
- 1443. — Other specific conditions.
- 1444. — Covenants or agreements as conditions precedent or independent agreements.
- 1445. Change in condition of premises.
- 1446. Eviction.
- 1447. — In general.
- 1448. — Constructive or partial eviction.
- 1449. Appropriation of premises to public use.
- 1450. Injury to or destruction of premises.
- 1451. — In general.
- 1452. — Nature and extent of injury.
- 1453. Cancellation of lease.
- 1454. Vacation, surrender, or abandonment of premises.
- 1455. — In general.
- 1456. — Covenants and agreements.
- 1457. — Surrender by cotenant or sublessor.
- 1458. — Acceptance.
- 1459. — Surrender of keys.
- 1460. — Person to whom surrender may be made.
- 1461. — Assignment; substitution of tenants.
- 1462. — Operation and effect.
 - (1). In general.
 - (2). Continued liability for rent.
 - (3). Mitigation of damages.
- 1463. Holding over after expiration of term.
- 1464. Option to purchase premises.
- 1465. Recovery of possession by landlord.
- 1466. Release from liability.

3. AMOUNT.

- 1470. In general.
- 1471. Percentage rental agreements.
- 1472. — In general; earnings and receipts.
- 1473. — Sales.
- 1474. Increase or reduction of amount.
- 1475. — In general.
- 1476. — Necessity and sufficiency of consideration.

VII. RENT.(Cont'd)

- 1477. — Conditional increase or reduction.
- 1478. — Notice of increase or reduction.
- 1479. Tenant holding over.
- 1480. Appraisal and reappraisal.
For arbitration issues, see ALTERNATIVE DISPUTE RESOLUTION §501.

4. TIME OF ACCRUAL.

- 1490. In general.
- 1491. Acceleration clauses.
- 1492. Annual rent.
- 1493. Rent payable in advance or at the end of period.

5. PERSONS ENTITLED.

- 1495. In general.
- 1496. Transfer of rent or lease by landlord.

6. PERSONS LIABLE.

- 1500. In general.
- 1501. — In general.
- 1502. — Mortgagee or agent of tenant.
- 1503. Transfer of lease or agreement.
- 1504. — In general.
- 1505. — Liability of lessee after assignment.
- 1506. — Liability of assignee in general.
- 1507. — Assignment as security.
- 1508. — Effect of second assignment.
- 1509. — Reassignment.
- 1510. — Liability of mortgagee.
- 1511. Subletting.
- 1512. Apportionment.

7. ABATEMENT.

- 1515. In general.
- 1516. Abatement as dependent on lessee's possession and enjoyment of the premises.

8. PAYMENT.

- 1520. In general.
- 1521. Payment by making repairs.
- 1522. Payment by note or due bill.
- 1523. Application of payments.
- 1524. Recovery of payments.
- 1525. Payment in advance.
- 1526. Payment in crops or goods.

233. LANDLORD AND TENANT**(B) ACTIONS.**

- 1530. Nature and form of remedy.
- 1531. — In general.
- 1532. — Assumpsit.
- 1533. Statutory provisions.
- 1534. Grounds.
- 1535. Conditions precedent in general.
- 1536. Demand.
- 1537. Defenses in general.
- 1538. Set-off and counterclaim.
- 1539. — In general.
- 1540. — Claims which may be subject of set-off, counterclaim, or recoupment in general.
- 1541. — Time when claim arose.
- 1542. — Damages arising from torts of landlord.
- 1543. — Damages for disturbance of tenant's possession and enjoyment of premises.
- 1544. — Damages arising from landlord's failure to repair or improve premises.
- 1545. — Claims for improvements and repairs.
- 1546. Persons who may sue.
- 1547. Persons who may be sued.
- 1548. Jurisdiction and venue.
- 1549. Time to sue and limitations.
- 1550. Parties.
- 1551. Attachment.
- 1552. — In general.
- 1553. — Defenses.
- 1554. — Grounds for attachment.
- 1555. — Property subject to attachment.
- 1556. — Time to sue.
- 1557. — Venue.
- 1558. — Parties.
- 1559. — Necessity and sufficiency of affidavit in general.
- 1560. — Amendment of affidavit or writ.
- 1561. — Bond.
- 1562. — Pleading.
- 1563. — Evidence.
- 1564. — Trial.
- 1565. — Judgment.
- 1566. — Wrongful attachment.
- 1567. — Levy.
- 1568. — Forthcoming bond.
- 1569. — Claims of third persons.

VII. RENT.(Cont'd)

- 1570. — Vacating, quashing, or setting aside.
- 1571. — Costs and attorney fees.
- 1572. Pleading.
- 1573. — In general.
- 1574. — Form and sufficiency of declaration or complaint.
- 1575. — Form and sufficiency of answer or cross-complaint in general.
- 1576. — Pleading, set-off, or counterclaim.
- 1577. — Affidavit of defense.
- 1578. — Reply.
- 1579. — Demurrer.
- 1580. — Amended and supplemental pleadings.
- 1581. — Issues, proof, and variance in general.
- 1582. — Evidence admissible under pleadings.
- 1583. Evidence.
- 1584. — In general.
- 1585. — Presumptions and burden of proof.
- 1586. — Admissibility.
- 1587. — Weight and sufficiency.
 - (1). In general.
 - (2). Set-off or counterclaim.
 - (3). To support finding, verdict, or judgment.
- 1591. Trial.
- 1592. — In general.
- 1593. — Questions for jury in general.
- 1594. — Submission to jury as determined by the evidence.
- 1595. — Instructions.
- 1596. Judgment.
- 1597. Damages.
- 1598. Execution.
- 1599. Costs and attorney fees.

(C) LIEN.

- 1600. In general.
- 1601. Contracts for liens.
- 1602. Statutory provisions.
- 1603. Right to lien.
- 1604. Creation and existence in general.
- 1605. Proceedings to perfect.
- 1606. Rent or advances secured.

233. LANDLORD AND TENANT**VII. RENT.**(Cont'd)

- 1607. Subject-matter to which lien attaches.
- 1608. — In general.
- 1609. — Crops.
- 1610. — Property of third persons in general.
- 1611. — Property of subtenants or assignees.
- 1612. — Property subsequently acquired.
- 1613. — Proceeds of property.
- 1614. Time when lien attaches; duration of lien.
- 1615. Priorities.
- 1616. — In general.
- 1617. — Between landlord's lien for rent and claim for advances.
- 1618. — Between landlord's lien and lien of judgment or execution.
- 1619. Rights and remedies of creditors of tenant.
- 1620. — In general.
- 1621. — Actions.
- 1622. Assignment of lien.
- 1623. Removal or transfer of property in general.
- 1624. — In general.
- 1625. — Acts constituting removal.
- 1626. — Liabilities of tenant, and person taking possession.
- 1627. — Actions.
- 1628. — Penalties and actions therefor.
- 1629. Rights and liabilities of purchasers of property.
- 1630. — In general.
- 1631. — Rights and liabilities of bona fide purchasers in general.
- 1632. — Notice to purchaser.
- 1633. — Rights of purchaser against tenant.
- 1634. — Actions.
- 1635. Criminal responsibility for removal or transfer of property.
- 1636. — In general.
- 1637. — Indictment.
- 1638. Defenses.
- 1639. — In general.
- 1640. — Estoppel to assert lien.
- 1641. — Waiver.
- 1642. — Loss of lien in general.
- 1643. — Delay in enforcement.

VII. RENT.(Cont'd)

- 1644. — Discharge.
- 1645. Persons entitled to enforce lien.
- 1646. Persons as against whom lien may be enforced.
- 1647. Enforcement.
- 1648. — In general.
- 1649. — Distress.
- 1650. — Attachment.
- 1651. — Summary judgment and execution.
- 1652. — Actions.
 - (1). In general.
 - (2). Right of action; defenses.
 - (3). Time to sue; limitations.
 - (4). Venue.
 - (5). Parties.
 - (6). Pleadings and affidavits.
 - (7). Evidence.
 - (8). Trial.
 - (9). Judgment.
 - (10). Distribution of proceeds of sale.
 - (11). Costs and attorney fees.
- 1653. — Wrongful enforcement.

(D) DISTRESS.

- 1660. In general.
- 1661. Nature and scope of remedy.
- 1662. Statutory provisions.
- 1663. Right to distrain.
- 1664. — In general.
- 1665. — Existence of relation of landlord and tenant.
- 1666. — Right to distrain for charges incident to rent or relation.
- 1667. — Right to distrain as affected by time of accrual of rent.
- 1668. — Sale, removal, or use of property as giving right of immediate distress.
- 1669. Defenses and grounds of opposition.
- 1670. Persons entitled to distrain.
- 1671. — In general.
- 1672. — Transfer of rent or reversion.
- 1673. Persons as against whom distress may be enforced.
- 1674. Property subject to distress.
- 1675. — In general.
- 1676. — Property in possession of tenant in general.

233. LANDLORD AND TENANT**VII. RENT.(Cont'd)**

- 1677. — Property in possession of tenant as agent.
- 1678. — Property in possession of tenant under contract of hiring.
- 1679. — Property not on the premises.
- 1680. Proceedings to distrain.
- 1681. — In general.
- 1682. — Demand as condition precedent.
- 1683. — Jurisdiction and venue.
- 1684. — Time to sue and limitations.
- 1685. — Parties.
- 1686. — Affidavit and other pleadings in general.
- 1687. — Amendment of affidavit or warrant.
- 1688. — Bond for warrant.
- 1689. — Form and contents of warrant.
- 1690. — Issuance, service, or levy of warrant.
- 1691. — Impounding and care of property.
- 1692. — Notice to tenant.
- 1693. — Bond to release levy.
- 1694. — Return of warrant.
- 1695. — Evidence.
- 1696. — Costs and attorney fees.
- 1697. — Trial.
- 1698. — Adjudication.
- 1699. — Execution.
- 1700. — Review.
- 1701. — Lien and priorities.
- 1702. — Defects and objections and waiver thereof.
- 1703. Claims by third persons.
- 1704. Sale or other disposition of property.
- 1705. Liabilities on bonds or other securities.
- 1706. — In general.
- 1707. — Liability on bond for warrant.
- 1708. — Liability on forthcoming bond.
- 1709. Wrongful distress.
- 1710. — In general.
- 1711. — Nature and form of remedy.
- 1712. — Right of action in general.
- 1713. — Ground of action.
- 1714. — Defenses.
- 1715. — Persons liable.
- 1716. — Pleading.
- 1717. — Evidence.
- 1718. — Damages.

VII. RENT.(Cont'd)

- 1719. — Trial.
- 1720. — Costs and expenses.

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.**(A) IN GENERAL.**

- 1730. In general.
- 1731. Statutes and regulations.

(B) SELF-HELP.

- 1735. In general.
- 1736. What constitutes reentry.
- 1737. Reentry during absence of tenant.
- 1738. Conditions precedent to reentry.
- 1739. Right to reenter by force.

(C) ACTIONS FOR RECOVERY OF POSSESSION.

- 1740. In general.
- 1741. Nature and form.
- 1742. — In general.
- 1743. — Summary proceedings.
- 1744. Statutory provisions.
- 1745. — In general.
- 1746. — Summary proceedings.
- 1747. Right to maintain action and conditions precedent.
- 1748. — In general.
- 1749. — Landlord-tenant relationship.
- 1750. — Exhaustion of administrative remedies.
- 1751. — Demand or notice.
 - (1). In general.
 - (2). Necessity.
 - (3). Sufficiency.
 - (4). Service.
 - (5). Waiver.
- 1752. Grounds.
- 1753. — In general.
- 1754. — Summary proceedings.
- 1755. Defenses.
- 1756. — In general.
- 1757. — Set-off and counterclaim.
- 1758. Actions.
- 1759. — In general.
- 1760. — Jurisdiction.
- 1761. — Time to sue and limitations.
- 1762. — Parties.
 - (1). In general.

233. LANDLORD AND TENANT**VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)**

- (2). Proper plaintiff.
- (3). — In general.
- (4). — Transfer of rent or reversion.
- (5). Proper defendant.
- (6). Joinder and intervention.
- 1763. — Pleading.
 - (1). In general.
 - (2). Allegations as to existence of relation of landlord and tenant.
 - (3). Description of parties.
 - (4). Verification.
 - (5). Amendments, motions, and objections.
- 1764. — Affidavit.
 - (1). In general.
 - (2). Counter-affidavits.
- 1765. — Summons.
 - (1). In general.
 - (2). Service and proof thereof.
- 1766. — Answer.
- 1767. — Issues, proof, and variance.
- 1768. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1769. — Trial.
- 1770. — Judgment.
 - (1). In general.
 - (2). Findings.
 - (3). Warrant to dispossess, and execution thereof.
 - (4). Cure, redemption, and effect thereof.
- 1771. — Appeal.
 - (1). In general.
 - (2). Transfer of cause.
 - (3). Presentation and reservation of grounds for review.
 - (4). Scope and standards of review.
 - (5). Hearing and determination.
 - (6). Liabilities on bonds.
- 1772. — Review on certiorari.
- 1773. — Restitution.

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)

- 1774. — Damages.
- 1775. — Costs and attorney fees.
- (D) ACTIONS FOR UNLAWFUL DETAINER.**
- 1780. In general.
- 1781. Nature and form.
- 1782. Statutory provisions.
- 1783. Right of action and defenses.
- 1784. — In general.
- 1785. — Existence of relation of landlord and tenant.
- 1786. — Grounds of action.
- 1787. — Defenses and grounds of opposition in general.
- 1788. — Invalidity of lease.
- 1789. — Set-off and counterclaim.
- 1790. Actions.
- 1791. — In general.
- 1792. — Jurisdiction.
- 1793. — Summary proceedings.
- 1794. — Demand or notice.
 - (1). In general.
 - (2). Necessity and sufficiency.
 - (3). Service.
 - (4). Waiver.
- 1795. — Parties.
 - (1). In general.
 - (2). Proper plaintiffs.
 - (3). Proper defendants.
 - (4). Joinder and intervention.
- 1796. — Time to sue and limitations.
- 1797. — Summons or other process.
- 1798. — Complaint.
- 1799. — Answer.
- 1800. — Issues, proof, and variance.
- 1801. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1802. — Pretrial bonds.
- 1803. — Trial.
- 1804. — Judgment and enforcement thereof.
- 1805. — Review.

233. LANDLORD AND TENANT**VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)**

1806. — Damages and amount of recovery.
 1807. — Costs and attorney fees.

(E) WRONGFUL DISPOSSESSION.

1810. In general.
 1811. Right to maintain action.
 1812. Grounds.
 1813. — In general.
 1814. — Trespass.
 1815. — Retaliatory eviction.
 1816. Defenses.
 1817. Actions.
 1818. — In general.
 1819. — Pleading.
 1820. — Evidence.
 1821. — Trial.
 1822. — Judgment.
 1823. — Review.
 1824. — Relief.
 (1). In general.
 (2). Damages.
 (3). Costs and attorney fees.

IX. REGULATED RENTS.**(A) REGULATION OF RENTS IN GENERAL.****1. IN GENERAL.**

1830. In general.
 1831. Emergency or reasonable rent in general.
 1832. Statutes and municipal regulations in general.
 1833. — In general.
 1834. — Power to regulate.
 1835. — Purpose.
 1836. — Construction.
 1837. — Validity.
 1838. — Proceedings for adoption, amendment, or repeal.
 1839. — Retroactive operation.
 1840. Administrative regulations.
 1841. — In general.
 1842. — Power to regulate.
 1843. — Purpose.
 1844. — Construction.
 1845. — Validity.

IX. REGULATED RENTS.(Cont'd)

1846. — Proceedings for adoption, amendment, or repeal.
 1847. — Retroactive operation.
 1848. — Judicial review.

2. PERSONS AND PREMISES SUBJECT TO REGULATIONS.

1850. In general.
 1851. Landlord and tenant relationship.
 1852. Number of rental units.
 1853. Owner's receipt of government financial incentives.
 1854. Actual use or occupancy on crucial date.
 1855. Business or commercial use.
 1856. Place of public amusement.
 1857. Statutory tenancy.
 1858. Subtenancy.
 1859. Other tenancies.
 1860. New, additional, rehabilitated, or reverted housing.
 1861. Waiver.
 1862. Proceedings to determine exempt status.
 1863. — In general.
 1864. — Pleading.
 1865. — Evidence.
 1866. — Hearing and trial.
 1867. — Findings, verdict, and judgment.
 1868. — Review.

3. ESTABLISHMENT OF RENT.

1870. In general.
 1871. Registration statements.
 1872. — In general.
 1873. — Purpose.
 1874. — Necessity and sufficiency; effect of nonregistration.
 1875. Fixation of reasonable rent in general.
 1876. — In general.
 1877. — Fair value or return.
 1878. — Incumbrances.
 1879. — Deduction of expenses, maintenance, and repairs.
 1880. — Covenants and agreements.
 (1). In general.
 (2). Percentage rental agreements.
 1881. Proceedings for fixation of reasonable rent.

233. LANDLORD AND TENANT**IX. REGULATED RENTS.(Cont'd)**

- 1882. — In general.
- 1883. — Defenses.
- 1884. — Pleading.
- 1885. — Bill of particulars.
- 1886. — Presumptions and burden of proof.
- 1887. — Admissibility and weight of evidence.
- 1888. — Hearing and trial.
- 1889. — Findings, verdict, and judgment.
- 1890. — Review.
- 1891. — Costs and attorney fees.
- 1892. Rent ceilings.
- 1893. — In general.
- 1894. — Facilities, privileges, and services.
- 1895. — Evasion of rent ceilings.

4. ADJUSTMENT OF RENT.

- 1900. In general.
- 1901. Retroactive adjustment.
- 1902. Agreements for adjustment.
- 1903. Grounds for adjustment.
- 1904. — In general.
- 1905. — Vacancy or succession.
- 1906. — Changes in facilities or services.
- 1907. — Peculiar circumstances.
- 1908. — Value of property.
- 1909. — Increased costs and expenses.
- 1910. Proceedings for adjustment.
- 1911. — In general.
- 1912. — Conditions precedent.
- 1913. — Pleading.
- 1914. — Evidence.
- 1915. — Hearing and trial.
- 1916. — Verdict, findings, and judgment.
- 1917. — Review.
- 1918. — Costs and attorney fees.
- 1919. Notice of rent adjustment.
- 1920. — In general.
- 1921. — Statutory tenancy.
- 1922. Revocation of adjustment.

5. REMEDIES.

- 1925. In general.
- 1926. Amount of rent.
- 1927. Actions.

**6. TERMINATION OF RENT CONTROL;
RECONTROL.**

- 1930. In general.
- 1931. Grounds.
- 1932. Proceedings.

(B) TRANSFER OF TENANCY RIGHTS.

- 1935. In general.
- 1936. Succession rights.
- 1937. Assignments.
- 1938. Subleases.

(C) PROHIBITED LANDLORD CONDUCT.

- 1940. In general.
- 1941. Failure to renew.
- 1942. Rent overcharges.
- 1943. Service reductions.
- 1944. Harassment.
- 1945. Proceedings.
- 1946. — In general.
- 1947. — Conditions precedent.
- 1948. — Time to sue and limitations.
- 1949. — Pleading.
- 1950. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1951. — Hearing and trial.
- 1952. — Findings, verdict, and judgment.
- 1953. — Relief.
- 1954. — Review.
- 1955. — Costs and attorney fees.
- 1956. Offenses.

(D) RECOVERY OF POSSESSION.**1. IN GENERAL.**

- 1960. In general.
- 1961. Statutes and ordinances.
- 1962. — In general.
- 1963. — Validity.
- 1964. — Construction.
- 1965. Administrative regulations.

2. PROTECTED PERSONS AND PREMISES.

- 1970. In general.
- 1971. Business or commercial space.
- 1972. Occupancy for dwelling purposes.

233. LANDLORD AND TENANT**IX. REGULATED RENTS.(Cont'd)**

- 1973. Landlord and tenant relationship.
- 1974. Statutory tenants.
- 1975. Subtenants, licensees, or other persons.
- 1976. Veterans.
- 1977. Waiver.

3. GROUNDS FOR RECOVERY OR NON-RECOVERY.

- 1980. In general.
- 1981. Landlord's need.
- 1982. — In general.
- 1983. — Altering or demolishing building.
- 1984. — Immediate and compelling necessity of landlord.
- 1985. — Immediate family of landlord.
- 1986. — One or two family dwelling.
- 1987. — Personal use and occupancy by landlord.
- 1988. — Landlord's equity or ownership.
- 1989. — Matched lease.
- 1990. — Withdrawal of accommodations from rental market.
- 1991. Purchase of premises subject to regulations.
- 1992. Violation of tenancy.
- 1993. — In general.
- 1994. — Unauthorized assignment or subletting.
- 1995. — Illegal or unauthorized use or occupancy.
- 1996. — Late payment or nonpayment of rent.
- 1997. — Nuisance.

4. PROHIBITED LANDLORD CONDUCT.

- 2000. In general.
- 2001. Wrongful dispossession.
- 2002. — In general.
- 2003. — Landlord's good faith.
 - (1). In general.
 - (2). Retaliatory eviction.
- 2004. Offenses and prosecutions.

5. PROCEDURE.

- 2010. In general.
- 2011. Notice.
- 2012. — In general.
- 2013. — Notice to cure violation.

IX. REGULATED RENTS.(Cont'd)

- 2014. — Notice to terminate tenancy or surrender possession.
 - (1). In general.
 - (2). Service of notice.
 - (3). Sufficiency of notice.
- 2015. Administrative proceedings.
- 2016. — In general.
- 2017. — Certificate of eviction.
 - (1). In general.
 - (2). Necessity.
 - (3). Operation and effect.
- 2018. Actions.
- 2019. — In general.
- 2020. — Jurisdiction.
- 2021. — Time for proceedings.
- 2022. — Parties.
- 2023. — Pleading and process.
- 2024. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - (5). — In general.
 - (6). — Landlord's need.
 - (7). — Violation of tenancy.
 - (8). — Wrongful dispossession.
- 2025. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 2026. — Judgment and remedies.
 - (1). In general.
 - (2). Damages and penalties.
 - (3). Costs and attorney fees.
- 2027. — Review.

X. PUBLIC AND PUBLICLY SUBSIDIZED HOUSING.**(A) IN GENERAL.**

- 2030. In general.
- 2031. Constitutions, statutes, and ordinances.
- 2032. Administrative regulations.
- 2033. Housing authorities and programs.

(B) TENANCY.

- 2040. In general.
- 2041. Eligibility.

233. LANDLORD AND TENANT**X. PUBLIC AND PUBLICLY SUBSIDIZED
HOUSING.(Cont'd)**

2042. — In general.
2043. — Succession rights.

(C) OPERATION AND MAINTENANCE.

2050. In general.
2051. Project initiation and termination.
2052. Discrimination.
2053. Public access.
2054. Proceedings.

(D) RENT.

2060. In general.
2061. Amount.
2062. Proceedings.
2063. Government subsidies.
2064. — In general.
2065. — Eligibility and amount.
2066. — Proceedings.

(E) TERMINATION OF TENANCY; EVICTION.

2070. In general.
2071. Grounds for recovery or nonrecovery.
2072. — In general.
2073. — Violation of tenancy.
 (1). In general.
 (2). Fraud in obtaining lease.
 (3). Nonpayment of rent.
 (4). Unauthorized occupants or visitors.
 (5). Illegal conduct.
2074. — Defenses.
 (1). In general.
 (2). Landlord's non-compliance with requirements.
 (3). Innocence; lack of knowledge.
 (4). Retaliatory eviction.
 (5). Waiver of violation.
2075. Proceedings.
2076. — In general.
2077. — Notice.
2078. — Pleading and process.
2079. — Evidence.
2080. — Hearing.
2081. — Remedies.
2082. — Review.

**XI. MOBILE HOMES AND MOBILE
HOME PARKS.**

2090. In general.
2091. Constitutions, statutes, and ordinances.
2092. — In general.
2093. — Purpose.
2094. — Construction.
2095. — Validity.
2096. Administrative regulations.
2097. — In general.
2098. — Purpose.
2099. — Construction.
2100. — Validity.
2101. Leases and agreements.
2102. Landlord's title and reversion.
2103. Nature and extent of tenancy.
2104. Assignment and subletting.
2105. Extensions and renewals.
2106. Options to purchase or sell.
2107. Termination.
2108. Use and enjoyment of premises.
2109. — In general.
2110. — Park rules and regulations.
 (1). In general.
 (2). Regulation of type and quality of home; appliances.
2111. — Common areas and facilities.
2112. — Repairs and improvements.
2113. — Liability for dangerous or defective conditions.
 (1). In general.
 (2). Injuries to third parties.
 (3). Actions.
 (4). — In general.
 (5). — Pleading.
 (6). — Evidence.
 (7). — Trial.
 (8). — Judgment.
 (9). — Relief.
2114. — Eviction and abandonment.
2115. Rent and other charges.
2116. — In general.
2117. — Rent control.
2118. — Installation and other incidental charges.
2119. — Actions.
 (1). In general.
 (2). Pleading.
 (3). Evidence.

234. LARCENY**XI. MOBILE HOMES AND MOBILE HOME PARKS.(Cont'd)**

- (4). Trial.
- (5). Judgment.
- (6). Relief.
- 2120. — Liens and distraint.
- 2121. Reentry and recovery of possession; termination.
- 2122. — In general.
- 2123. — Grounds in general.
- 2124. — Change in use of park.
- 2125. — Defenses; retaliatory eviction.
- 2126. — Actions.
 - (1). In general.
 - (2). Notice.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Trial.
 - (6). Judgment.
 - (7). Relief.
- 2127. Sale or transfer of home, limitations on.

XII. RENTING ON SHARES.

- 2140. Nature of contract.
- 2141. Statutory provisions.
- 2142. Requisites and validity of contracts.
- 2143. Construction and operation of contracts in general.
- 2144. Nature of relation created.
- 2145. Mode of cultivation of land.
- 2146. Rights and liabilities as to land.
- 2147. Rights and liabilities as to crops.
- 2148. — In general.
- 2149. — Title to and possession of crop before division.
- 2150. — Tenancy in common and joint tenancy as to crops.
- 2151. — Waiver of rights by landlord.
- 2152. — Conversion.
- 2153. Mode of division of crops.
- 2154. Liens.
- 2155. — In general.
- 2156. — Extent of lien and priorities.
- 2157. — Waiver or loss of lien.
- 2158. — Enforcement of lien.
- 2159. — Lien of cropper.
- 2160. Reentry and recovery of possession by landlord.

XII. RENTING ON SHARES.(Cont'd)

- 2161. Rights and liabilities as to third persons.
- 2162. — In general.
- 2163. — Rights of assignee of landlord.
- 2164. Actions between parties.
- 2165. — In general.
- 2166. — Actions by tenant against landlord in general.
- 2167. — Damages.
- 2168. — Actions by landlord against tenant in general.
- 2169. — Demand.
- 2170. — Pleading.
- 2171. — Evidence.
- 2172. — Attachment and distress.
- 2173. — Trial.
- 2174. Actions by or against third persons.
- 2175. Offenses.

234. LARCENY**SUBJECTS INCLUDED**

Taking and removing, with intent to steal, personal property in possession, actual or constructive, of another, without force or intimidation, or any false personation or pretense

Attempts to commit such offenses

Nature and elements of crimes of larceny or theft in general, and of grand or petit larceny, larceny from the person or from a dwelling or other building or structure, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conviction of larceny on indictment for other offense, see **INDICTMENTS AND CHARGING INSTRUMENTS**

Embezzlement of money or goods by one having possession thereof, see **EMBEZZLEMENT**

234. LARCENY

Larceny by swindle, cheat, trick, or device, see FALSE PRETENSES

Obtaining money or goods by—

Cheating or false pretenses, see FALSE PRETENSES

False personation, see FALSE PRETENSES

Other offenses, theft or intent to steal as an element of, see BURGLARY, ROBBERY

Receiving property stolen, see RECEIVING STOLEN GOODS

I. OFFENSES AND RESPONSIBILITY THEREFOR, ⚭1–27.

II. PROSECUTION AND PUNISHMENT, ⚭28–89.

(A) INDICTMENT AND INFORMATION, ⚭28–40.

(B) EVIDENCE, ⚭41–66.

(C) TRIAL AND REVIEW, ⚭68–83.

(D) SENTENCE AND PUNISHMENT, ⚭86–89.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

1. Nature and elements in general.
2. Statutory provisions.
3. Intent.
 - (1). In general.
 - (2). Existence at time of taking.
 - (3). Claim of title or right.
 - (4). Intent to convert or acquire property and deprive owner thereof.
4. Property subject of larceny.
5. — In general.
6. — Value.
7. — Ownership.
8. — Possession or custody.
9. — Larceny by owner from bailee.
10. — Property lost or mislaid.
11. Taking.

Larceny by swindle, cheat, trick, or device, see FALSE PRETENSES.
12. — In general.
13. — Consent of owner.
15. — Conversion by trustee, bailee, agent, or servant.
 - (1). In general.
 - (2). Borrowers or hirers of horses or other property.
 - (3). Servants and agents.

I. OFFENSES AND RESPONSIBILITY THEREFOR.(Cont'd)

16. — Property lost or mislaid.
17. Asportation.
18. Secreting, withholding, or appropriation of property.
19. Larceny from the person.
20. Larceny from dwelling house.
21. Larceny from shop, store, or other building.
22. Bringing into state property stolen elsewhere.
23. Grand or petit larceny, and degrees.
24. Attempts.
25. Possession of implements for commission of larceny.
26. Defenses.
27. Persons liable.

II. PROSECUTION AND PUNISHMENT.

(A) INDICTMENT AND INFORMATION.

28. Requisites and sufficiency in general.
 - (1). Sufficiency in general.
 - (2). Requisites in general.
 - (3). Place of offense.
 - (4). Grade or degree of offense.
29. Intent.
30. Description of property.
 - (1). In general.
 - (2). Pocketbooks and contents.
 - (3). Clothing and jewelry.
 - (4). Horses, mules, and asses.
 - (5). Cattle.
 - (6). Swine.
 - (7). Drafts, checks, notes, and other writings.
 - (8). Money in general.
 - (9). Coin.
 - (10). Currency and treasury and national bank notes.
 - (11). Bank notes.
31. Value of property.
32. Ownership of property.
 - (1). In general.
 - (2). Necessity of alleging ownership.
 - (3). Property of husbands and wives.
 - (4). Property of principals, agents, partnerships, and joint or several owners.

234. LARCENY**II. PROSECUTION AND PUNISHMENT.(Cont'd)**

- (5). Property in possession of bailee.
- (6). Property of corporations and business organizations.
- (7). Property of landlords and tenants.
- (8). Property belonging to decedents' estates.
- (9). Ownership unknown.
- 33. Possession or custody of property.
- 34. Taking and asportation in general.
- 35. Secreting, withholding, or appropriation of property.
- 36. Larceny by trustee, bailee, agent, or servant.
- 37. Larceny from the person.
- 38. Larceny from dwelling house, shop, store, or other building.
- 39. Bringing into state property stolen.
- 40. Issues, proof, and variance.
 - (1). In general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance in general.
 - (5). Variance as to time and place of taking.
 - (6). Variance as to description of property in general.
 - (7). Variance as to description of animals.
 - (8). Variance as to description of money, currency, treasury certificates, and bank notes.
 - (9). Variance as to ownership of property in general.
 - (10). Variance as to ownership of property by principals, agents, partnerships, and joint or several owners.
 - (11). Variance as to possession and custody of property.

(B) EVIDENCE.

- 41. Presumptions and burden of proof.
- 42. Admissibility.
- 43. — In general.
- 44. — Intent.
- 45. — Identity of property.
- 46. — Value of property.
- 47. — Ownership of property.

II. PROSECUTION AND PUNISHMENT.(Cont'd)

- 48. — Taking, asportation, and appropriation of property.
- 49. — Identity, presence, and acts of accused.
- 50. — Incriminating circumstances in general.
- 50.5. — Possession by accused of implements for commission of larceny.
- 51. — Possession by accused of property stolen.
 - (1). In general.
 - (2). Explanation of possession.
- 52. — Matters of defense.
- 53. — Rebuttal.
- 54. Weight and sufficiency.
- 55. — In general.
- 56. — Corpus delicti.
- 57. — Intent.
- 58. — Identity of property.
- 59. — Value of property.
- 60. — Ownership and possession or custody of property.
- 61. — Situation or place of taking of property.
- 62. — Taking and asportation of property in general.
 - (1). In general.
 - (2). Consent of owner.
- 63. — Conversion, secreted, withholding, or appropriation of property.
- 64. — Effect of possession of property stolen.
 - (.5). In general.
 - (1). Presumptions arising from possession in general.
 - (2). Conclusiveness of presumptions.
 - (3). Remoteness of possession.
 - (4). Exclusiveness of possession.
 - (5). Identity of property.
 - (6). Explanation of possession.
 - (7). Possession accompanied by other incriminating circumstances.
 - (8). Sufficiency of proof of defendant's possession.
- 65. — Grade or degree of offense.
- 66. — Attempts.

(C) TRIAL AND REVIEW.

- 68. Questions for jury.

234. LARCENY**II. PROSECUTION AND PUNISHMENT.**(Cont'd)

- (1). In general.
- (2). Intent.
- (3). Possession of property stolen.
- 69. Instructions.
- 70. — In general.
 - (1). In general.
 - (2). Instructions defining offense.
 - (3). Applicability to issues and evidence.
- 71. — Intent.
 - (1). In general.
 - (2). Existence at time of taking.
 - (3). Taking for temporary use or purpose.
 - (4). Taking under claim of right.
- 72. — Nature and value of property.
- 73. — Ownership and possession or custody of property.
- 74. — Situation or place of taking of property.
- 75. — Taking and asportation of property in general.
 - (1). In general.
 - (2). Consent of owner.
- 76. — Conversion, secreting, withholding, or appropriation of property.
- 77. — Effect of possession of property stolen, and of explanation thereof.
 - (1). In general.
 - (2). Applicability to issues and evidence.
 - (3). Issues and evidence requiring instructions as to possession of property.
 - (4). Explanation of possession.
- 78. — Matters of defense.
- 79. — Grade or degree of offense.
- 80. — Punishment.
- 81. Verdict.
- 82. — In general.
- 83. — Finding as to value of property.

(D) SENTENCE AND PUNISHMENT.

- 86. Form and requisites of sentence.
- 87. Nature and extent of punishment.
- 88. — In general.
- 89. — Mitigation on restitution or recovery of property stolen.

237. LIBEL AND SLANDER**SUBJECTS INCLUDED**

Malicious defamation, by words spoken, written, or printed, or by signs, pictures, etc., injurious to a person in his general reputation, or exposing a living person, or the memory of one deceased, to hatred, contempt, or ridicule, or prejudicial to a person in his profession, trade, occupation, employment, or office, or otherwise causing one special damage, or injurious to one's interest in property, real or personal, or tending to provoke a breach of the peace

Justification or excuse for or mitigation of such defamation

Nature and extent of liability of those speaking or publishing such defamatory words, etc.

Actions for damages therefor

Criminal responsibility for libels in general, and prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Blasphemous and obscene libels, see OBSCENITY, and CRIMINAL LAW ¶45.20

- I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR, ¶1-33.
- II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN, ¶34-51.
- III. JUSTIFICATION AND MITIGATION, ¶52-67.
- IV. ACTIONS, ¶68-129.
 - (A) RIGHT OF ACTION AND DEFENSES, ¶68-76.
 - (B) PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING, ¶77-100.
 - (C) EVIDENCE, ¶101-112.
 - (D) DAMAGES, ¶113-121.
 - (E) TRIAL, JUDGMENT, AND REVIEW, ¶123-129.
- V. SLANDER OF PROPERTY OR TITLE, ¶130-140.
- VI. CRIMINAL RESPONSIBILITY, ¶141-162.
 - (A) OFFENSES, ¶141-150.
 - (B) PROSECUTION AND PUNISHMENT, ¶151-162.

237. LIBEL AND SLANDER

I. WORDS AND ACTS ACTIONABLE,
AND LIABILITY THEREFOR.

1. Nature and elements of defamation in general.
- 1.5. Constitutional and statutory provisions.
- 1.6. What law governs.
- 1.7. Preemption.
2. Intent.
3. Malice.
4. — In general.
5. — Implied.
6. Actionable words in general.
 - (1). In general.
 - (2). Imputation of falsehood, dishonesty, or fraud.
 - (3). Imputation of indebtedness or delinquency in paying debts.
 - (4). Imputation of inebriety or mental derangement.
 - (5). Imputation of libelous or slanderous acts.
 - (6). Insults leading to breach of the peace.
7. Words imputing crime and immorality.
 - (1). In general.
 - (2). Nature of crime and punishment.
 - (3). Arrest and imprisonment.
 - (4). Intent or attempt to commit crime.
 - (5). Abortion.
 - (6). Assault, burglary, robbery and homicide.
 - (7). Arson and burning of buildings.
 - (8). Bigamy.
 - (9). Conspiracy and blackmail.
 - (10). Crimes against the government and violation of laws concerning elections and the mail.
 - (11). Disorderly house, gambling, and intoxicating liquors.
 - (12). Forgery, false pretenses, and breach of trust.
 - (13). Larceny.
 - (14). Perjury and subornation of perjury.
 - (15). Violation of food laws.
 - (16). Want of chastity or sexual crimes in general.
 - (17). Adultery.
 - (18). Fornication, incest, and rape.

I. WORDS AND ACTS ACTIONABLE, AND
LIABILITY THEREFOR.(Cont'd)

- (19). Prostitution.
8. Words imputing contagious or venereal disease.
9. Words tending to injure in profession or business.
 - (1). In general.
 - (2). Physicians and dentists.
 - (3). Attorneys at law.
 - (4). Clergymen.
 - (5). Teachers and other educators.
 - (6). Contractors.
 - (7). Merchants, tradesmen, and manufacturers.
 - (8). Authors and newspapers.
 - (9). Brokers and advertising agents.
10. Words imputing unfitness for or misconduct or criminal acts in office or employment.
 - (.5). In general.
 - (1). Public officers in general.
 - (2). Legislative officers.
 - (3). Executive officers and employees.
 - (4). Judicial officers.
 - (5). Corporation and association officers.
 - (6). Employees.
11. Words actionable as causing special damage.
 - 11.1. — In general.
12. — Nature and meaning in general.
13. — Nature and extent of injury.
14. Words written or printed, signs, pictures, and other representations.
15. — In general.
16. — Exposing person to hatred, contempt, or ridicule.
17. — Causing person to be shunned or avoided.
18. — Tending to injure in business or occupation.
19. Construction of language used.
20. Certainty.
 - 20.1. — In general.
21. — Person defamed.
22. — Matter imputed.
23. Publication.
 - 23.1. — In general.
24. — Slander.

237. LIBEL AND SLANDER**I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR.(Cont'd)**

- 25. — Libel.
- 26. Repetition.
- 26.1. — In general.
- 27. — By same person.
- 28. — By others in general.
- 29. — As hearsay or rumor.
- 30. Falsity.
- 31. Injury from defamation.
- 32. — In general.
- 33. — Presumption as to damage; special damages.

II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN.

- 34. Nature and grounds of privilege in general.
- 35. Absolute privilege.
- 36. — In general.
- 37. — Legislative proceedings.
- 38. — Judicial proceedings.
 - (1). In general.
 - (2). Complaints, affidavits, or motions.
 - (3). Pleadings.
 - (4). Evidence.
 - (5). Briefs, arguments, and statements of counsel.
- 39. — Official acts, reports, and records.
- 40. Qualified privilege.
- 41. — In general.
- 42. — Reports.
 - (.5). In general.
 - (1). Judicial proceedings.
 - (2). Executive and legislative proceedings and investigations.
 - (3). Proceedings of churches and other societies or associations.
- 43. — Discharge of duty to public.
- 44. — Discharge of duty to others.
 - (1). In general.
 - (2). As to character of suitor or lover.
 - (3). As to character of employee.
 - (4). Reports of mercantile standing by agencies or others.
- 45. — Common interest in subject-matter.
 - (1). In general.
 - (2). Common business interest.
 - (3). Common membership in church.
- 46. — Self-defense.

II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN.(Cont'd)

- 47. — Request or provocation by person injured.
- 48. Criticism and comment on public matters; public figures.
 - (1). In general.
 - (2). Character and conduct of public officers and employees.
 - (3). Character of candidates for office.
- 49. Publication and discussion of news.
- 50. Good faith in exercise of privilege or right.
- 50.5. Exceeding privilege or right.
- 51. Existence and effect of malice.
 - (1). In general.
 - (2). Statements made in judicial and official proceedings.
 - (3). Reports of judicial and official proceedings.
 - (4). Discharge of duty to others or to public and common interest in subject-matter.
 - (5). Criticism and comment on public matters and publication of news.

III. JUSTIFICATION AND MITIGATION.

- 52. Nature and grounds in general.
- 53. Constitutional and statutory provisions.
- 54. Truth as justification in general.
- 55. Truth of part of defamatory matter; substantial truth.
- 56. Facts constituting justification.
 - (1). In general.
 - (2). Belief as to truth.
 - (3). Rumors, other publications, and reputation of person defamed.
 - (4). Retraction or apology.
- 57. Effect of failure to establish justification.
- 58. Grounds of mitigation.
- 59. — In general.
- 60. — Matter in justification.
- 61. — Bad character of person defamed.
- 62. — Absence of malice.
- 63. — Provocation and passion.
- 64. — Publications by and liability of others.
- 65. — Absence of special damage.

237. LIBEL AND SLANDER**III. JUSTIFICATION AND MITIGATION.(Cont'd)**

- 66. — Retraction, apology, and reparation.
- 67. Effect of mitigation.

IV. ACTIONS.**(A) RIGHT OF ACTION AND DEFENSES.**

- 68. Nature and form of remedy.
- 69. Grounds of action.
- 70. Conditions precedent.
- 71. Defenses in general.
- 72. Abatement or survival on death of party.
- 73. Persons entitled to sue.
- 74. Persons liable.
- 75. Jurisdiction and venue.
- 76. Time to sue and limitations.

See also LIMITATION OF ACTIONS.

(B) PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING.

- 77. Parties.
- 78. Process and appearance.
- 79. Declaration, complaint, or petition.
- 79.1. — In general.
- 80. — Form and requisites in general.
- 81. — Inducement and extrinsic matter.
- 82. — Colloquium.
- 83. — Intent and malice.
- 84. — Publication.
- 85. — Setting out defamatory matter.
- 86. — Innuendoes.
 - (.5). In general.
 - (1). Office and functions.
 - (2). Necessity and propriety.
 - (3). Sufficiency.
 - (4). Conclusiveness and effect of innuendoes.
- 87. — Falsity of defamatory matter.
- 88. — Damage in general.
- 89. — Special damage.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency in general.
 - (3). Sufficiency as to injury to business or profession.
- 90. Plea or answer.
- 90.1. — In general.
- 91. — Matters of defense in general.
- 92. — Notice of special matter.
- 93. — Privilege.

IV. ACTIONS.(Cont'd)

- 94. — Justification.
 - (1). In general.
 - (2). Admitting the publication.
 - (3). Setting forth facts in general.
 - (4). Justifying particular charges.
 - (5). Partial justification.
- 95. — Mitigation.
- 96. Replication or reply and subsequent pleadings.
- 97. Demurrer.
- 98. Amended and supplemental pleadings.
- 99. Bill of particulars.
- 100. Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues raised by and evidence admissible under pleadings in general.
 - (2). Special damages.
 - (3). Justification.
 - (4). Mitigation.
 - (5). Privilege.
 - (6). Good character and reputation.
 - (7). Matters to be proved.
 - (8). Variance.

(C) EVIDENCE.

- 101. Presumptions and burden of proof.
 - (1). In general.
 - (2). Meaning of language.
 - (3). Publication and responsibility therefor.
 - (4). Privilege.
 - (5). Justification and mitigation.
- 102. Admissibility.
- 103. — In general.
- 104. — Intent and malice.
 - (1). In general.
 - (2). Prior state of feelings between plaintiff and defendant.
 - (3). Other publications in general.
 - (4). Other publications made after action commenced.
 - (5). Other publications not actionable.
 - (6). Publications against third persons.
 - (7). Refusal to retract.
- 105. — Matters of inducement and extrinsic facts.
 - (1). In general.

237. LIBEL AND SLANDER**IV. ACTIONS.(Cont'd)**

- (2). Statements and publications other than those complained of.
- (3). Meaning of language used.
- (4). Persons defamed.
- 106. — Publication.
- 107. — Extent of injury in general.
 - (1). In general.
 - (2). Extent of circulation.
 - (3). Worldly position and pecuniary condition of parties.
 - (4). Exemplary damages.
- 108. — Special damage.
- 109. — Privilege.
- 110. — Justification.
 - (1). In general.
 - (2). Rumor and general belief as to truth of defamatory matter.
 - (3). Character and reputation of person defamed.
- 111. — Mitigation.
- 112. Weight and sufficiency.
 - (1). In general.
 - (2). Intent, malice, or good faith.
 - (3). Justification and mitigation.

(D) DAMAGES.

- 113. Measure in general.
- 114. Nominal or substantial damages.
- 115. Elements of compensation.
- 116. — In general.
- 117. — Injury to reputation.
- 118. — Special damages.
- 119. — Mental suffering and emotional distress.
- 120. Exemplary.
 - (1). In general.
 - (2). On ground of malice or recklessness.
- 121. Amount awarded.
 - (.5). In general.
 - (1). Libel.
 - (2). Slander.

(E) TRIAL, JUDGMENT, AND REVIEW.

- 123. Questions for jury.
 - (1). In general.
 - (2). Construction of defamatory language in general.

IV. ACTIONS.(Cont'd)

- (3). Construction of language imputing crime.
- (4). Construction of language imputing unchastity or immorality.
- (5). Person defamed.
- (6). Good faith, intent, and malice in general.
- (7). Justification and mitigation.
- (8). Privilege.
- (9). Damages in general.
- (10). Exemplary damages.
- 124. Instructions.
 - (1). In general.
 - (2). Burden of proof and purpose and effect of evidence.
 - (3). Intent, malice, and good faith in general.
 - (4). Character and construction of defamatory language.
 - (5). Injury from defamation.
 - (6). Privilege.
 - (7). Justification and mitigation.
 - (8). Damages.
- 125. Verdict and findings.
- 126. New trial.
- 127. Judgment.
- 128. Appeal and error.
- 129. Costs.

V. SLANDER OF PROPERTY OR TITLE.

- 130. Nature and elements in general.
- 131. Intent and malice.
- 132. Actionable words or conduct relating to title.
- 133. Actionable words or conduct relating to quality or value.
- 134. Falsity.
- 135. Injury from slander.
- 136. Defenses.
- 137. Persons entitled to sue.
- 138. Persons liable.
- 139. Actions.
- 140. Slander to try title or action of jactitation.

VI. CRIMINAL RESPONSIBILITY.**(A) OFFENSES.**

- 141. Nature and elements in general.

238. LICENSES**VI. CRIMINAL RESPONSIBILITY.**(Cont'd)

- 142. Constitutional and statutory provisions.
- 143. Intent and malice.
- 144. Oral defamation.
- 145. Libelous words and acts.
- 146. Publication of defamatory matter.
- 147. Furnishing libelous information for publication.
- 148. Privileged communication.
- 149. Justification.
- 150. Persons liable.

(B) PROSECUTION AND PUNISHMENT.

- 151. Jurisdiction and venue.
- 152. Indictment and information.
 - (1). In general.
 - (2). Inducement, extrinsic matters, colloquium, and innuendoes.
 - (3). Intent and malice.
 - (4). Publication.
 - (5). Issues, proof, and variance.
- 153. Evidence.
 - 153.1. — In general.
- 154. — Presumptions and burden of proof.
- 155. — Admissibility.
- 156. — Weight and sufficiency.
- 158. Questions for jury.
- 159. Instructions.
- 160. Verdict.
- 162. Sentence and punishment.

238. LICENSES**SUBJECTS INCLUDED**

Permission required by public authority for various occupations and pursuits, and registration, certification, etc., incident thereto

Fees for such licenses, certificates, or registration, and taxes imposed on the privileges granted or the occupations, exhibitions, etc., permitted

Permission by owners of real property to persons having no estate therein to do some act thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indian tribes, see **INDIANS** ⇨226

Injuries to licensees, liability of landowners or tenants, see **NEGLIGENCE, LANDLORD AND TENANT, RAILROADS**

Particular occupations or acts, or dealings in property subject to particular regulations, licenses for, see **ALCOHOLIC BEVERAGES, HEALTH, INNKEEPERS, PUBLIC AMUSEMENT AND ENTERTAINMENT**, and other specific topics

Patent, copyright, and trademark licenses, see **PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, TRADEMARKS**

Securities transactions, see also **SECURITIES REGULATION**

- I. FOR OCCUPATIONS AND PRIVILEGES, ⇨1–42.
- II. IN RESPECT OF REAL PROPERTY, ⇨43–64.

I. FOR OCCUPATIONS AND PRIVILEGES.

- 1. Nature of license for or tax on occupation or privilege.
- 2. Power to license or tax.
- 3. — In general.
- 4. — United States.
- 5. — States.
 - 5.1. — Counties.
 - 5.5. — Municipal corporations.
- 6. — Delegation of power.
- 7. Constitutionality and validity of acts and ordinances.
 - (1). In general.
 - (2). Equality and uniformity in general.
 - (3). Uniformity as to occupations or privileges of same class.
 - (4). Classification according to amount of business or capital.
 - (5). Different localities.
 - (6). Discrimination against nonresidents.
 - (7). Taxation according to value.
 - (8). Double taxation.
 - (9). Reasonableness of fees.
- 8. Statutory provisions.
 - (.5). In general.

238. LICENSES**I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)**

- (1). Construction and operation in general.
- (2). Amendment or repeal of particular statutes.
- 9. Municipal ordinances.
 - (.5). In general.
 - (1). Construction and operation in general.
 - (2). Amendment or repeal of particular ordinances.
- 10. Subjects of license or tax.
- 10.1. — In general.
- 11. — Occupations and employments in general.
 - (1). In general.
 - (3). Agents in general.
 - (5). Contractors.

Excludes farm labor contractors, see LABOR AND EMPLOYMENT XVI.

- (7). Employment agencies.
- 12. — Manufactures.
- 13. — Mechanical trades and pursuits.
- 14. — Vehicles and means of transportation.
 - (1). In general.
 - (2). Vehicles for carriage of passengers.
 - (3). Vehicles for carriage of goods in general.
 - (4). Vehicles used by merchants for delivery of goods.
- 15. — Mercantile business in general.

Sales, use, gross receipts, and similar general taxes, see TAXATION.

 - (1). In general.
 - (2). Transient or itinerant dealers, merchants, traders, or vendors.
 - (3). Sale of goods by manufacturer.
 - (4). Sales of foreign merchandise.
 - (5). Sales to employees or tenants.
 - (6). Canvassers, drummers, or traveling salesmen.
 - (7). Merchants dealing in or giving trading stamps to customers.
 - (8). Chain stores and department stores.
- 16. — Dealings in particular articles.

Selective sales and use taxes, see TAXATION.

 - (.1). In general.

I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)

- (.5). Automobile dealers.
- (9). Dealers in oils or products thereof.

Gasoline or motor fuel tax, see TAXATION.
- (11). Secondhand stores and junk shops.
- 17. — Special privileges.
- 18. — Corporate franchises and privileges.
- 19. Exemptions.
 - (.5). In general.
 - (1). Constitutional provisions.
 - (2). Exemptions in corporate charters.
 - (3). Occupations and privileges in general.
 - (4). Manufacturers.
- 20. Eligibility for license.
- 21. Licensing officers.
- 22. Proceedings to procure license or certificate.
- 23. Form and requisites of license or certificate.
- 24. Registration.
- 25. Conditions imposed; regulations.

Excludes farm labor contractors, see LABOR AND EMPLOYMENT XVI.
- 25.5. Recovery funds.
- 26. Bonds or other security.
- 27. License fees and taxes.
- 28. — In general.
- 29. — Amount.
- 30. — Levy and assessment.
- 31. — Lien on property.
- 32. — Payment.
- 32.1. — Collection.
- 33. — Disposition of moneys collected.
- 34. — Refunding or recovering.
- 35. — Remedies for wrongful assessment or collection.
- 36. Construction and effect of licenses.
- 37. Transfer of rights.
- 38. Revocation, suspension, or forfeiture; discipline in general.
- 38.5. Rights and remedies of unlicensed or unauthorized persons and of persons dealing with them in general.
- 38.7. — In general.
- 39.1. — Validity of contracts in general.

239. LIENS**I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)**

- 39.2. — Compensation for services in general.
- 39.3. — Actions in general.
- 39.39. — Miscellaneous occupations and activities in general.
- 39.40. — Architects and engineers.
 - (1). In general.
 - (2). Actions.
- 39.42. — Buying or discounting notes or securities.
- 39.43. — Contractors.
 - (1). In general.
 - (2). Actions.
- 39.45. — Dealers.
- 39.46. — Plumbers.
- 39.48. — Theatrical and athletic managers.
- 40. Violations of license or registration laws.
- 41. Penalties and forfeitures and actions therefor.
- 42. Criminal prosecutions.
 - (.5). In general.
 - (1). Jurisdiction.
 - (2). Defenses.
 - (3). Indictment, information, or complaint.
 - (4). Evidence.
 - (5). Trial.
 - (6). Review.
 - (7). Sentence and punishment.

II. IN RESPECT OF REAL PROPERTY.

- 43. Nature of license in general.
- 44. Licenses distinguished from other rights in land.
 - (1). In general.
 - (2). Lease.
 - (3). Easement.
- 45. Mode of creation.
- 46. — In general.
- 47. — Parol licenses.
- 48. Requisites and validity.
- 49. Evidence as to existence.
- 50. Construction and operation in general.
- 51. Nature and extent of rights.
- 52. Alteration or modification.
- 53. Transfer of rights.
- 54. Abandonment.
- 55. Obstruction by licensor.

II. IN RESPECT OF REAL PROPERTY.(Cont'd)

- 56. Termination or extinguishment.
- 57. Revocation.
 - 57.1. — In general.
- 58. — Licenses revocable.
 - (1). In general.
 - (2). Licenses coupled with an interest.
 - (3). Licenses upon consideration.
 - (4). Executed licenses in general.
 - (5). Evidence of revocation.
- 59. — Right to revoke.
- 60. — Notice before revocation.
- 61. — Express revocation.
- 62. — Implied revocation.
- 63. — Operation and effect.
- 64. Pleading and evidence of license as defense.

239. LIENS**SUBJECTS INCLUDED**

Charges on specific property or its proceeds by way of security for payment of debts or performance of other acts, whether arising from contract or equity between the parties, or imposed by rule of law or statute, and whether dependent on or independent of possession

Nature and grounds of such charges in general

Creation and waiver, discharge, or extinguishment thereof

Priorities of liens

Enforcement of liens in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Mortgage or pledge, liens created by, see MORTGAGES AND DEEDS OF TRUST, CHATTEL MORTGAGES, PLEDGES, SECURED TRANSACTIONS

Particular classes of personal relations, occupations, or transactions, liens peculiar to, see ATTORNEYS AND LEGAL SERVICES, FACTORS, SALES, REAL PROPERTY CONVEYANCES, and other specific topics

239. LIENS

Particular property, liens peculiar to, see RAILROADS, LOGS AND LOGGING, MECHANICS' LIENS, MARITIME LIENS and other specific topics

Particular remedies, liens acquired by enforcement of, see CREDITORS' REMEDIES, LIS PENDENS, JUDGMENT, and other specific topics

Taxes, liens of, see TAXATION, INTERNAL REVENUE

1. Nature and incidents in general.
2. Creation by contract.
 - 2.1. — In general.
3. — Express.
4. — Implied.
5. Creation by operation of law in general.
6. Effect of usages.
7. Equitable liens.
8. Statutory liens.
9. Proceedings to perfect.
10. Debts or liabilities secured.
11. Subject-matter to which lien attaches.
12. Priorities.
13. Assignment.
14. Removal or transfer of property in general.
15. Rights and liabilities of purchasers of property.
16. Waiver, loss, or discharge.
17. Enforcement.
18. — In general.
- 18.5. — Retention of possession of property.
19. — Foreclosure and sale without action.
20. — Attachment.
21. — Execution or order for sale.
- 21.5. — Executory process.
22. — Actions.
23. Redemption.

241. LIMITATION OF ACTIONS**SUBJECTS INCLUDED**

Statutory restrictions of the time within which actions may be brought

Application and general operation of such statutory provisions

Times of limitation prescribed for actions in general, when such times begin to run, and postponement and interruption thereof

Exceptions from and suspension of the operation of the statutes

Removal of statutory bar by new promise, acknowledgment, part payment, etc.

Pleading such limitations by way of defense and matters in avoidance of the bar thereof

Evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Administrative agencies and proceedings, timeliness of judicial review or intervention, see ADMINISTRATIVE LAW AND PROCEDURE and other specific topics

Adverse possession of property as an element or evidence of title, see ADVERSE POSSESSION

Agreement, limitations by, see CONTRACTS, INSURANCE, CARRIERS, and topics relating to other classes of contracts

Criminal prosecutions, see CRIMINAL LAW and topics relating to particular crimes

Limitations, lapse of time, laches, etc., in—

Admiralty, see ADMIRALTY

Equity, see EQUITY

Limitations on actions by or against particular classes of persons, or for particular forms or kinds of actions or other remedies, see EXECUTORS AND ADMINISTRATORS, MECHANICS' LIENS, BANKRUPTCY, MUNICIPAL CORPORATIONS, TAXATION, and other specific topics

Presumption of payment from lapse of time, see PAYMENT

Statutory rights or remedies, limitations restricting, see DEATH and topics relating to other particular statutory rights and remedies

- I. STATUTES OF LIMITATION, ¶1–42.
 (A) NATURE, VALIDITY, AND CONSTRUCTION IN GENERAL, ¶1–15.

241. LIMITATION OF ACTIONS

- I. STATUTES OF LIMITATION—Cont'd
- (B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS, ¶¶16–42.
- II. COMPUTATION OF PERIOD OF LIMITATION, ¶¶43–138.
 - (A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE, ¶¶43–64.
 - (B) PERFORMANCE OF CONDITION, DEMAND, AND NOTICE, ¶¶65–69.
 - (C) PERSONAL DISABILITIES AND PRIVILEGES, ¶¶70–78.
 - (D) DEATH AND ADMINISTRATION, ¶¶80–83.
 - (E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY, ¶¶84–94.
 - (F) IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OR DISCOVERY OF CAUSE OF ACTION, ¶¶95–104.
 - (G) PENDENCY OF LEGAL PROCEEDINGS, INJUNCTION, STAY, OR WAR, ¶¶104.5–114.
 - (H) COMMENCEMENT OF PROCEEDING; RELATION BACK, ¶¶115–138.
- III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT, ¶¶139–164.
- IV. OPERATION AND EFFECT OF BAR BY LIMITATION, ¶¶165–175.
- V. PLEADING, EVIDENCE, TRIAL, AND REVIEW, ¶¶176–202.

I. STATUTES OF LIMITATION.**(A) NATURE, VALIDITY, AND CONSTRUCTION IN GENERAL.**

- 1. Nature of statutory limitation.
- 2. What law governs.
 - (1). In general.
 - (2). Effect of residence of parties.
 - (3). In actions for tort.
 - (4). Effect of federal statute in state courts.
- 3. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Amendment or repeal of statutes.
- 4. Validity of statutes.
 - (1). In general.
 - (2). Constitutionality of statute.
- 5. Construction of limitation laws in general.
 - (1). In general.

I. STATUTES OF LIMITATION.(Cont'd)

- (2). Reference or application to other statutes.
- (3). Actions to which statute applies.
- 6. Retroactive operation.
 - (1). In general.
 - (2). Equitable actions.
 - (3). Mortgage foreclosure.
 - (4). Actions by state or municipality.
 - (5). Actions relating to real property.
 - (6). Actions on judgments.
 - (7). Disability, absence, or nonresidence of person.
 - (8). Acknowledgment, new promise, or part payment.
 - (9). Revival of causes of action by amendment or repeal of statute.
 - (10). Provisions for existing causes of action.
 - (11). Computation of time.
- 10. Persons as against whom limitation is available.
- 11. Limitation as against state, municipality, or public officers.
 - (.5). In general.
 - (1). Government, state or officer thereof.
 - (2). County or officers thereof.
 - (3). Municipality or officers thereof.
 - (4). Public corporations or officers thereof.
- 12. Persons who may rely on limitation.
 - (1). In general.
 - (2). Government, municipality, or officers thereof.
- 13. Estoppel to rely on limitation.
- 14. Agreements as to period of limitation.
- 15. Agreements waiving limitation.

(B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS.*See also particular topics.*

- 16. Limitation as affected by nature or form of remedy in general.
- 17. Effect, on limitation, of election between remedies.
- 18. Particular forms of action.
- 19. Recovery of real property.
 - (1). In general.
 - (2). Actions at law in general.

241. LIMITATION OF ACTIONS**I. STATUTES OF LIMITATION.(Cont'd)**

- (3). Equitable actions.
- (4). Partition.
- (5). Foreclosure of mortgage or deed for security.
- (6). Redemption from mortgage or deed for security.
- (7). Title under forced sale.
- (8). Establishment of lost deed.
- (9). Enforcement of vendor's lien.
- (10). Proceedings for assignment or recovery of dower.
- 20. Recovery of personal property.
- 21. Contracts in general.
 - (1). In general.
 - (2). Construction of contract.
 - (3). Employment.
 - (4). Carriage.
 - (5). Liability of corporate stockholders and officers.
 - (6). Contract for reimbursement.
- 22. Sealed instruments.
 - (1). In general.
 - (2). What constitutes instrument under seal in general.
 - (3). Mortgage.
 - (4). Sealed note or indorsement thereon.
 - (5). Coupons.
 - (6). Covenants in conveyance.
 - (7). Bonds in general.
 - (8). Official and fiduciary bonds.
- 23. Written contracts.
- 24. — In general.
 - (1). In general.
 - (2). What constitutes written contract in general.
 - (3). Subscription.
 - (4). Contract of sale.
 - (5). Corporate charter.
 - (6). Covenants of warranty.
- 25. — Instruments for payment of money.
 - (1). In general.
 - (2). What constitutes instrument for payment of money.
 - (3). Bill or note in general.
 - (4). Purchase-money notes.
 - (5). Indorsement of bill or note.

I. STATUTES OF LIMITATION.(Cont'd)

- (6). Receipt for money with promise to repay.
- (7). Attested writings.
- (8). Municipal or county warrants.
- (9). Bank book.
- (10). Mortgage or security.
- (11). Judgment.
- (12). Agreement of attorney to collect claim and account for proceeds.
- (13). Offer of reward.
- 26. Oral contracts.
 - 26.1. — In general.
- 27. — Express.
- 28. Implied contracts and debts and obligations not evidenced by writing.
 - (1). In general.
 - (2). Implied contract growing out of breach of written contract.
- 29. Accounts.
 - Partnership accounts, see PARTNERSHIP §1014.*
 - (1). In general.
 - (2). What constitutes accounts.
 - (3). Account stated.
- 30. Torts in general.
- 31. Injuries to the person.
- 32. Injuries to property.
 - (1). In general.
 - (2). Taking or injuring property without compensation.
 - (3). Overflowing land.
- 33. Liabilities for acts or omissions in official capacity.
- 34. Liabilities created by statute.
 - (1). In general.
 - (2). Liability of state or municipality.
 - (3). Liability of public officer.
 - (4). Official or statutory fees.
 - (5). Liabilities of corporate stockholders or officers.
 - (6). Injuries to property.
 - (7). Taxes and assessments.
- 35. Penalties and forfeitures.
 - (1). In general.
 - (2). Injuries to property.
 - (3). Liability of corporate officers or stockholders.
 - (4). Recovery of taxes.
 - (5). Recovery of wager.

241. LIMITATION OF ACTIONS**I. STATUTES OF LIMITATION.(Cont'd)**

- (6). Discrimination or overcharges.
- (7). Effect of interest of prosecutor.
- 36. Equitable actions and remedies in general.
 - (1). In general.
 - (2). Trusts.
 - (3). Rescission or cancellation.
 - (4). Specific performance.
 - (5). Reformation of instruments.
 - (6). Enforcement of vendor's lien.
- 37. Relief on ground of fraud or mistake.
 - (1). In general.
 - (2). Actions to which statute applies.
 - (3). Relief against judgment or award.
 - (4). Rescission or cancellation.
- 38. Civil proceedings other than actions.
- 39. Actions or proceedings not specially provided for.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Redemption from mortgage.
 - (4). Breach of warranty.
 - (5). Reformation of instruments.
 - (6). Enforcement of judgment.
 - (7). Rescission or cancellation.
 - (8). Quieting title.
 - (9). Accounting.
 - (10). Mandamus.
 - (11). Establishment or enforcement of trust.
 - (12). Recovery of real property and dower.
 - (13). Injuries to property.
 - (14). Liability of corporate stockholders.
 - (15). Wills.
- 40. Defenses in general.
 - (1). In general.
 - (2). Fraud as defense.
- 41. Set-offs, counterclaims, and cross-actions.
- 42. Applicability of different limitations to same action or proceeding.

II. COMPUTATION OF PERIOD OF LIMITATION.**(A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE.**

- 43. Causes of action in general.
- 44. Title to or possession of real property.

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- (1). In general.
- (2). Nature of entry or possession.
- (3). Title to support action in general.
- (4). Title under forced or judicial sale.
- (5). Title or right of parties to mortgage or deed as security.
- (6). Rights of heirs and devisees.
- (7). Tacking successive possession or right.
- (8). Forcible entry and detainer.
- 45. Title to or possession of personal property.
- 46. Contracts in general.
 - (1). In general.
 - (2). Conditional contract.
 - (3). Indefinite time for performance.
 - (4). Contract to pay on demand.
 - (5). Contract to pay after death.
 - (6). Breach of contract in general.
 - (7). Contract of employment.
 - (8). Contract with agent.
 - (9). Contract of sale.
 - (10). Guaranty.
 - (11). Contract of carriage.
 - (12). Assumption of debt or mortgage.
- 47. Covenants and conditions.
 - (1). In general.
 - (2). Covenants in sale or conveyance.
 - (3). Bond or contract of suretyship in general.
 - (4). Guardian's bond.
- 48. Instruments for payment of money.
 - (5). In general.
 - (1). Bills and notes.
 - (2). Indefinite time for payment.
 - (3). Conditional obligation.
 - (4). Bonds.
 - (5). Effect of indorsement of note.
 - (6). Municipal obligations.
 - (7). Effect of security.
- 49. Implied contracts.
 - (1). In general.
 - (2). Liability for services rendered.
 - (3). Liability of agent or attorney for funds collected.
 - (4). Funds received on invalid obligation or without authority.

241. LIMITATION OF ACTIONS**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- (5). Liability to refund overpayment by mistake.
- (6). Liability to contribution.
- (7). Implied warranty.
- (8). Usury.
- 50. Continuing contracts.
 - (1). In general.
 - (2). Contract of employment or agency in general.
 - (3). Professional services by attorney.
 - (4). Contract for maintenance.
- 51. Severable contracts and installments.
 - (1). In general.
 - (2). Installments in general.
 - (3). Interest.
- 52. Accounts.
- 53. — In general.
 - (1). In general.
 - (2). Nature of account in general.
 - (3). Services rendered.
 - (4). Partnership.
 - (5). Principal and agent.
 - (6). Tacking transactions or accounts after cessation.
- 54. — Mutual accounts.
 - (.5). In general.
 - (1). Necessity for mutuality of accounts.
 - (2). What constitutes mutual accounts.
 - (3). Effect of mutuality of accounts.
 - (4). Closing accounts.
- 55. Torts.
 - (1). In general.
 - (2). Negligence.
 - (3). Negligence in performance of professional services.
 - (4). Injuries to person.
 - (5). Injuries to property in general.
 - (6). Continuing injury in general.
 - (7). Injuries to property by flowage, diversion or obstruction of waters.
 - (8). Wrongful seizure of property.
- 56. Reimbursement or indemnity from person ultimately liable.
 - (1). In general.
 - (2). Indemnity.

**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- (3). Action by surety or indorser against principal.
- (4). Action by agent against principal.
- 57. Liabilities for acts or omissions in official capacity.
 - (1). In general.
 - (2). Failure to require sufficient bond or security.
 - (4). Misappropriation of public funds.
 - (5). Failure to pay over money due in official capacity.
- 58. Liabilities created by statute.
 - (1). In general.
 - (1.5). Continuing violation in general.
 - (2). Liability of municipality or public officers.
 - (3). Damages resulting from public improvement.
 - (4). Liability of corporate officers or stockholders.
 - (5). Officers and stockholders of bank.
 - (6). Recovery of taxes or assessments.
 - (7). Civil rights.
 - (8). Labor and employment.
 - (9). — In general.
 - (10). — Wages and hours.
 - (11). — Labor relations.
 - (12). Securities regulation.
 - (13). Consumer protection; unfair trade practices.
 - (14). Antitrust.
 - (15). Intellectual property.
 - (16). Racketeering.
 - (17). Privacy; disclosure of confidential information.
 - (18). Health.
- 59. Penalties and forfeitures.
 - (1). In general.
 - (2). Taking usury.
- 60. Equitable actions and remedies.
 - (1). In general.
 - (2). Accounting.
 - (3). Accounting between partners.
 - (4). Accounting by trustee.
 - (5). Rescission or cancellation.
 - (6). Reformation of instrument.
 - (7). Enforcement of contract.

241. LIMITATION OF ACTIONS**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- (8). Recovery of purchase money on failure of title.
- (9). Enforcement of vendor's lien.
- (10). Quieting title.
- (11). Subrogation.
- 61. Civil proceedings other than actions.
- 62. Defenses in general.
- 63. Set-offs, counterclaims, and cross-actions.
- 64. Effect of subsequent accrual of new cause of action.
- (B) PERFORMANCE OF CONDITION, DEMAND, AND NOTICE.**
- 65. Conditions precedent in general.
 - (1). In general.
 - (2). Preliminary action, judgment, or execution.
 - (3). Proceeding to fix liability.
 - (4). Conditional subscription.
 - (5). Obligations to insurance company.
- 66. Demand.
 - (1). In general.
 - (2). Necessity for demand in general.
 - (3). Obligations of state or municipality.
 - (4). Subscription for corporate stock.
 - (5). Claim of wife against husband.
 - (6). Demand for performance of contract.
 - (7). Funds or property held in trust or in fiduciary capacity.
 - (8). Funds or property held by bailee.
 - (9). Deposits.
 - (10). Claim by principal against agent or attorney.
 - (11). Action for breach of official duty.
 - (12). Liability payable on demand.
 - (13). Liability payable at specified time after demand.
 - (14). Property wrongfully received or held.
 - (15). Time for making demand.
 - (16). Sufficiency of demand.
- 67. Notice.
- 68. Tender.
- 69. Leave to sue.

(C) PERSONAL DISABILITIES AND PRIVILEGES.

- 70. Disabilities in general.
 - (1). In general.
 - (2). Disability of part of several jointly interested.
- 71. Alienage.
- 72. Infancy.
 - (1). In general.
 - (2). Personal actions.
 - (3). Actions for recovery of real property.
 - (4). Action against former guardian or trustee.
 - (5). Effect of marriage.
 - (6). Effect of nonresidence.
 - (7). Effect of action during disability.
- 73. Coverture.
 - (1). In general.
 - (2). Effect of separate property acts.
 - (3). Nature of property or cause of action involved.
 - (4). Claim between spouses.
 - (5). Claim to real property in general.
 - (6). Recovery of property disposed of by husband.
 - (7). Recovery of property purporting to have been conveyed by wife.
 - (8). Effect of separation from husband.
 - (9). Effect of disability on joint action by husband and wife.
 - (9.5). Effect on husband's right to wife's property.
 - (10). Effect on wife's heirs of surviving husband's interest.
- 74. Insanity or other incompetency.
 - (1). In general.
 - (2). Removal of disability.
- 75. Conviction or imprisonment for crime.
- 76. Disability intervening after accrual of cause of action.
 - (1). In general.
 - (2). Infancy.
 - (3). Coverture.
 - (4). Insanity.
- 77. Coexisting disabilities.
- 78. Tacking successive disabilities.
- (D) DEATH AND ADMINISTRATION.**
- 80. Death of person entitled to sue.

241. LIMITATION OF ACTIONS**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

82. Accrual of cause of action before issuance of letters testamentary or of administration.
83. Death of person liable.
- (1). In general.
 - (2). Effect of administration of estate of decedent or want thereof.
 - (3). Death of person jointly liable.
 - (4). Death after commencement of action.
- (E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY.**
84. Absence at time of accrual of cause of action.
- (.5). In general.
 - (1). Person entitled to sue.
 - (2). Person liable in general.
 - (3). Nature of absence.
 - (4). Action relating to specific property or interests therein.
 - (5). Effect of property subject to levy within jurisdiction.
85. Departure after accrual of cause of action.
- (.5). In general.
 - (1). Person entitled to sue.
 - (2). Person liable in general.
 - (3). Nature of absence or removal.
 - (4). Liability created out of state.
 - (5). Actions relating to specific property or interests therein.
 - (6). Effect of property subject to levy within jurisdiction.
86. Nonresidence.
87. — In general.
- (1). In general.
 - (2). Person entitled to sue.
 - (3). Person liable.
 - (4). Nature of residence.
 - (5). Actions relating to specific property or interests therein.
 - (6). Effect of agency within jurisdiction.
88. — Corporations.
89. Return and residence after absence.
90. Concealment of person or residence.
91. — In general.

**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

92. — Ignorance of person entitled to sue.
93. Concealment of property involved or liable.
94. Effect as to parties jointly or severally liable, guarantors, and sureties.
- (F) IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OR DISCOVERY OF CAUSE OF ACTION.**
95. Ignorance of cause of action.
- (1). In general; what constitutes discovery.
 - (1.5). Knowledge as to extent of harm or damage.
 - (2). Want of diligence by one entitled to sue.
 - (3). Nature of harm or damage, in general.
 - (4). Injuries to the person.
 - (4.1). — In general.
 - (5). — Diseases; drugs.
 - (6). — Libel and slander.
 - (7). Injuries to property.
 - (8). Title to or interest in property.
 - (9). Contracts; warranties.
 - (10). Professional negligence or malpractice.
 - (10.1). — In general.
 - (11). — Attorneys.
 - (12). — Health care professionals in general.
 - (13). — “Foreign object” or “foreign substance” claims.
 - (14). Labor and employment.
 - (15). Civil rights.
 - (16). Consumers’ remedies.
 - (17). Antitrust claims.
 - (18). Securities; corporations.
96. Mistake as ground for relief.
- (1). In general.
 - (2). Discovery of mistake.
97. Duress as ground for relief.
98. Fraud as ground for relief.
99. — In general.
- (1). In general.
 - (2). Fraud in the purchase, sale, or acquisition of property.
 - (3). Cancellation of instrument.

241. LIMITATION OF ACTIONS**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- 100. — Discovery of fraud.
 - (1). In general.
 - (2). What constitutes cause for relief on ground of fraud within exception.
 - (3). Fraud in obtaining possession of or title to property.
 - (4). Fraud in obtaining judgment.
 - (5). Action for deceit.
 - (6). Fraud in sale of property.
 - (7). Fraud of person acting in official or fiduciary capacity.
 - (8). Fraud of agent or attorney.
 - (9). Action to open account or settlement.
 - (10). Cancellation of instruments.
 - (11). Diligence in discovering fraud.
 - (12). What constitutes discovery of fraud.
 - (13). Constructive notice of fraud.
- 101. Existence of trust.
- 102. — In general.
 - (1). In general.
 - (2). When relation exists in general.
 - (3). Possession of property.
 - (4). Express or continuing trust.
 - (5). What constitutes express or continuing trust.
 - (6). Resulting or implied trust.
 - (7). What constitutes resulting or implied trust.
 - (8). Constructive trust.
 - (9). What constitutes constructive trust.
 - (10). Rights of parties claiming under trustee.
 - (11). Termination of trust.
- 103. — Repudiation or violation of trust.
 - (1). In general.
 - (2). Necessity for disclaimer or repudiation.
 - (3). What constitutes repudiation or violation of trust.
 - (4). Notice of repudiation.
- 104. Concealment of cause of action.
 - (1). In general.
 - (2). What constitutes concealment.

**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- (3). Concealment by agent or third person.
- (G) PENDENCY OF LEGAL PROCEEDINGS,
INJUNCTION, STAY, OR WAR.**
- 104.5. Suspension or stay in general; equitable tolling.
- 105. Pendency of action or other proceeding.
 - (1). In general.
 - (2). Pendency of action on different cause or in different forum.
- 106. Pendency of appeal.
- 107. Supersedeas or stay of proceedings.
- 108. Pendency of arbitration.
- 109. Property in custody of the law.
- 110. Pendency of proceedings under assignment for creditors or in insolvency or bankruptcy.
- 111. Injunction.
- 112. Stay laws.
- 113. War.
- 114. Suspension of statute of limitations.
- (H) COMMENCEMENT OF PROCEEDING;
RELATION BACK.**
- 115. Mode of computation of time limited.
- 117. Proceedings constituting commencement of action.
- 118. — In general.
 - (1). In general.
 - (2). Filing pleadings.
- 119. — Issuance and service of process.
 - (.5). In general.
 - (1). Issuance of process.
 - (2). Delivery of process to officer.
 - (3). Service of process.
 - (4). Service on part of defendants.
 - (5). Substituted service.
 - (6). Subsequent, alias, or pluries process.
- 120. Want of jurisdiction.
- 121. Defects as to parties.
 - (1). In general.
 - (2). Amendment of defects.
- 122. Defects or irregularities in process or service.
- 123. Defects or irregularities in pleadings or other proceedings.

241. LIMITATION OF ACTIONS**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- 124. Intervention or bringing in new parties.
- 125. Substitution of parties.
- 126. Effect as to persons not parties.
- 126.5. Class actions, matters peculiar to.
- 127. Amendment of pleadings.
 - (1). In general.
 - (2). Amendment restating original cause of action.
 - (2.1). — In general.
 - (3). — Nature of action in general.
 - (4). — Actions on contract.
 - (5). — Actions for injuries to the person.
 - (6). — Actions for causing death.
 - (7). — Actions for libel and slander.
 - (8). — Actions for injuries to or wrongful dealings with property.
 - (9). — Actions to enforce liens.
 - (10). — Will contest.
 - (11). Amendment introducing new cause of action.
 - (11.1). — In general.
 - (12). — Nature of action in general.
 - (13). — Actions on contract.
 - (14). — Actions for injuries to the person.
 - (15). — Actions for causing death.
 - (16). — Actions for malicious prosecution or slander.
 - (17). — Actions for injuries to or wrongful dealings with property.
 - (18). Amendment affecting form of action or relief.
- 128. Defenses in general.
- 129. Set-offs, counterclaims, and cross-actions.
- 130. New action after dismissal or nonsuit or failure of former action.
 - (1). In general.
 - (2). Actions within exception of statute.
 - (3). Nature or form or identity of actions or proceedings.
 - (4). Abatement or abandonment of former action.
 - (5). Dismissal or nonsuit in general.

**II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)**

- (6). New action in different forum.
- (7). Failure of action for want of jurisdiction.
- (8). Failure for defects as to parties.
- (9). Failure of action for want of or defects in process or service thereof.
- (10). Failure of action for defects in pleading.
- (11). Identity of or change in parties.
- (12). Decisions on review.
- (13). Action on set-off, counterclaim, or cause of action alleged as defense.
- (14). Severance of action.
- 131. Civil proceedings other than actions in general.
- 132. Presentation of claim against estate of decedent.
- 133. Presentation of claim against estate of insolvent or bankrupt.
- 134. Proceedings in other court or tribunal.
- 135. Proceedings in other state.
- 136. Failure to commence action or proceeding in time.
- 137. — In general.
- 138. — Excuses for delay.

**III. ACKNOWLEDGMENT, NEW PROMISE,
AND PART PAYMENT.**

- 139. Causes of action which may be renewed or revived.
- 140. Acknowledgment or new promise.
 - 140.1. — In general.
- 141. — Nature in general.
- 142. — Persons to whom made.
- 143. — Persons by whom made.
 - (1). In general.
 - (2). Joint and several obligations.
 - (3). Partners.
 - (4). Husband and wife.
 - (5). Executor or administrator.
 - (6). Parties to incumbrance or their successors in interest.
- 145. — Form and requisites in general.
 - (1). In general.
 - (2). Provisions in will.

241. LIMITATION OF ACTIONS**III. ACKNOWLEDGMENT, NEW PROMISE,
AND PART PAYMENT.(Cont'd)**

- (3). Proceedings by municipal corporation or officers.
- (4). Judicial admissions.
- (5). Consideration.
- 146. — Requirement of writing.
 - (1). In general.
 - (2). Effect of verbal acknowledgment or promise.
 - (3). Sufficiency of writing or signature.
- 147. — Including debt in schedule on assignment for creditors.
- 148. — Sufficiency of acknowledgment or promise in general.
 - (.5). In general.
 - (1). Essential elements in general.
 - (2). Implied promise.
 - (3). Sufficiency of compliance with requirements as to essential elements in general.
 - (4). Admission of existing liability and renewal of obligation.
 - (5). Assertion of payment.
 - (6). Accounts.
- 149. — Qualifications and conditions.
 - (1). In general.
 - (2). Provisions for payment.
 - (3). Refusal or inability to pay and claim of set-off.
 - (4). Compromise or settlement.
 - (5). Acceptance of offer.
 - (6). Fulfillment or compliance with condition.
- 150. — Certainty and definiteness.
 - (1). In general.
 - (2). Provisions for payment.
 - (3). Identity of debt.
 - (4). Amount of debt.
- 151. — Construction and operation.
 - (1). In general.
 - (2). Renewal or revival of cause of action.
 - (3). Time of making.
 - (4). Accrual of right of action and limitations.
 - (5). Effect of condition or contingency.
- 152. Part payment.
- 152.1. — In general.

**III. ACKNOWLEDGMENT, NEW PROMISE,
AND PART PAYMENT.(Cont'd)**

- 153. — Nature in general.
- 154. — Persons to whom made.
- 155. — Persons by whom made.
 - (1). In general.
 - (2). Joint and several obligations.
 - (3). Principals, sureties, indorsers, and guarantors.
 - (4). Partners.
 - (5). Husband and wife.
 - (6). Executor or administrator, and heirs, devisees, or life tenants.
 - (7). Assignee, receiver, or trustee.
 - (8). Parties to incumbrance and their successors in interest.
- 157. — Sufficiency in general.
 - (1). In general.
 - (2). Admission or denial of liability and payment by way of compromise or settlement.
 - (3). Payment of interest.
 - (4). Application of payments.
 - (5). Payments from proceeds of security.
- 158. — Medium of payment.
- 159. — Entry of credit in account.
- 160. — Indorsement on note or other instrument.
- 162. — Ratification of unauthorized payment.
- 163. — Operation and effect.
 - (1). In general.
 - (2). Payment on account.
 - (3). Renewal or revival of cause of action.
 - (4). Effect of statute requiring written acknowledgment or promise.
 - (5). Time of making.
 - (6). Accrual of right of action and limitations.
- 164. Revival of debt as revival of lien or other security.

**IV. OPERATION AND EFFECT
OF BAR BY LIMITATION.**

- 165. Operation as to rights or remedies in general.
- 166. Nature and extent of bar.
- 167. Bar of debt as affecting security.

241. LIMITATION OF ACTIONS**IV. OPERATION AND EFFECT OF
BAR BY LIMITATION.(Cont'd)**

- (1). In general.
- (2). Mortgage or deed as security.
- (3). Vendor's lien.
- 168. Bar of security as affecting debt.
- 169. Effect as to remedies in other states.
- 170. Actions and other remedies barred.
- 171. Persons to whom bar is available.
- 172. — In general.
- 173. — Personal nature of defense.
- 174. Persons barred.
 - (1). In general.
 - (2). Effect on beneficiary of limitations against trustee or person acting in representative capacity.
- 175. Waiver of bar.

**V. PLEADING, EVIDENCE,
TRIAL, AND REVIEW.**

- 176. Pleading in anticipation of defense.
- 176.1. — In general.
- 177. — Necessity.
 - (1). In general.
 - (2). Necessity of pleading matters avoiding bar of statute.
 - (3). Fraud or mistake.
 - (4). Acknowledgment, new promise, and part payment.
- 178. — Sufficiency of allegations in general.
- 179. — Matters avoiding bar of statute.
 - (1). In general.
 - (2). Ignorance, trust, fraud, and concealment of cause of action.
 - (3). Acknowledgment, new promise, and part payment.
- 180. Demurrer, exception, or motion raising defense.
 - (1). In general.
 - (2). Matters appearing on face of pleadings.
 - (3). Nature of action or proceeding.
 - (4). Matters avoiding bar of statute.
 - (5). Form, requisites, sufficiency, and time for filing.
 - (6). Waiver.
 - (7). Motion.
- 181. Pleading statute as defense.

**V. PLEADING, EVIDENCE, TRIAL,
AND REVIEW.(Cont'd)**

- 181.1. — In general.
- 182. — Necessity.
 - (.5). In general.
 - (1). Time to plead.
 - (2). Necessity in general.
 - (3). Necessity of special plea of statute.
 - (4). Matters appearing on face of pleadings.
 - (5). Waiver or estoppel by failure to plead.
 - (6). Proceedings by referee or commissioner.
 - (7). Pleading statute in avoidance of defense.
- 183. — Sufficiency of denials and allegations.
 - (1). In general.
 - (2). Reference to statute and setting out facts.
 - (3). Lapse of time and accrual of right of action.
 - (4). Nature of action.
 - (5). Matters avoiding bar.
 - (6). Different causes of action.
- 184. — Amendment to plead statute.
- 185. — Demurrer or reply to plea or answer.
- 185.5. — Construction and operation of pleadings.
- 186. Pleading in avoidance of defense.
- 186.1. — In general.
- 187. — Necessity.
- 188. — Notice of matter in avoidance.
- 189. — Amendment of original pleading.
- 190. — Replication or reply and subsequent pleadings.
- 191. — Sufficiency of allegations in general.
- 192. — Matters avoiding bar of statute.
 - (.5). In general.
 - (1). Acknowledgment, new promise, and part payment.
 - (2). Personal disabilities.
 - (3). Trust, fraud, and concealment of cause of action.
 - (4). Commencement of action.
- 193. Issues, proof, and variance.

242. LIS PENDENS**V. PLEADING, EVIDENCE, TRIAL,
AND REVIEW.(Cont'd)**

- 194. Evidence.
 - 194.1. — In general.
- 195. — Presumptions and burden of proof.
 - (.5). In general.
 - (1). Presumptions in general.
 - (3). Burden of proof in general.
 - (4). Personal disabilities and absence or nonresidence.
 - (5). Fraud or concealment of cause of action.
 - (6). Acknowledgment, new promise, and part payment.
- 196. — Admissibility.
 - (1). In general.
 - (2). Acknowledgment or new promise.
 - (3). Part payment.
 - (4). Parol evidence.
- 197. — Weight and sufficiency.
 - (1). In general.
 - (2). Ignorance, trust, fraud, and concealment of cause of action.
 - (3). Acknowledgment or new promise.
 - (4). Part payment.
- 199. Questions for jury.
 - (1). In general.
 - (2). Fraud and concealment of cause of action.
 - (3). Acknowledgment or new promise.
 - (4). Part payment.
- 200. Instructions.
 - (1). In general.
 - (2). Acknowledgment, new promise, and part payment.
- 201. Verdict, findings and judgment.
- 202. Review.
 - (1). In general.
 - (2). Presumptions.

242. LIS PENDENS**SUBJECTS INCLUDED**

Effect of pendency of actions to subject property involved therein to the power of the

court during the continuance of the litigation, so that it shall abide the result

What property may be so subject

What constitutes pendency of suit for such purpose

Necessity of notice, and requisites and sufficiency of notices of pendency of action, and filing and service thereof

Operation and effect of pending actions and of notice thereof on rights of purchasers and others as to property constituting the subject of such actions

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Defense of pendency of other action, see ABATEMENT AND REVIVAL, PLEADING

Mechanics' liens, notices of pendency of actions to enforce, see MECHANICS' LIENS

- 1. Nature and grounds in general.
- 2. Statutory provisions.
- 3. Actions affecting rights to property involved therein.
 - (1). In general.
 - (2). Actions for divorce and alimony.
 - (3). Actions to set aside conveyances, and creditors' suits.
 - (4). Actions to establish or enforce liens.
- 4. Property subject to lis pendens.
- 5. Jurisdiction of property and of owner or claimant thereof.
- 6. Commencement and pendency of action.
- 7. — In general.
 - 7.1. — Filing pleading.
 - 7.2. — Change of venue or removal and loss of papers from files.
- 8. — Time of commencement of lis pendens.
- 9. — Sufficiency of description of property in pleadings.
- 10. — Prosecution of action.
- 11. — Termination of action.
 - (1). In general.
 - (2). As affected by proceedings for review or vacation of judgment.
- 12. Notice of pendency of action.
 - 12.1. — In general.
- 13. — Necessity in general.

242. LIS PENDENS

15. — Actions in which notice is authorized.
16. — Form and requisites in general.
17. — Sufficiency of description of property.
18. — Filing and recording.
20. — Cancellation, discharge, or modification.
21. Effect of amendment of pleadings.
22. Operation and effect in general.
 - (1). In general.
 - (2). Extent of notice.
 - (3). Action on unrecorded instrument as notice overcoming lack of record.
 - (4). Nature of judgment as affecting purchasers pendente lite.
 - (5). Effect on prior unrecorded conveyance.
23. Purchasers pending suit.
24. — In general.
 - (1). In general.
 - (2). Actions to enforce lien or charges.
 - (3). Actions to set aside conveyances, and creditors' suits.
 - (4). Actions for recovery of specific real or personal property.
 - (5). Partition suits.
 - (6). Actions for specific performance.
25. — Persons bound by judgment or decree.
 - (5). In general.
 - (1). Who will be deemed purchasers.
 - (1.1). — In general.
 - (2). — Acquisition of possession.
 - (3). — Incumbrancers.
 - (4). — Purchasers at judicial sales.
 - (5). — Purchase prior but conveyance subsequent to commencement of lis pendens.
 - (6). — Purchasers on foreclosure of mortgage senior to commencement of lis pendens.
 - (7). — Necessity that purchaser should claim under party to suit to be affected by lis pendens.
 - (8). — Purchasers from vendor in privity with party to suit.
 - (9). — Purchasers at tax sales.
26. — Rights and liabilities.

- (1). In general.
- (2). Effect of pendency of action to suspend running of statute of limitations.
- (3). Right of purchaser to compensation for improvements.
- (4). Relief awarded against purchaser pendente lite.

244H. LOBBYING**SUBJECTS INCLUDED**

Regulation, particularly by statute, of conduct directed at influencing legislative action

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Antitrust regulation, see ANTITRUST AND TRADE REGULATION

Attorneys, regulation of as attorneys, see ATTORNEYS AND LEGAL SERVICES

Billing of lobbying expenses—

Under public contracts, see PUBLIC CONTRACTS and other government topics

As attorney fees, see COSTS, FEDERAL CIVIL PROCEDURE

To utility customers, see PUBLIC UTILITIES and other specific topics

Bribery, see BRIBERY

Construction of statutes, opinions of lobbyists concerning, see STATUTES ⇌1186

Contracts to influence legislation, validity of, see CONTRACTS ⇌126

Ethics restrictions on public officials and employees, see PUBLIC EMPLOYMENT and other government topics

Extortion, see EXTORTION

Misconduct as affecting validity of statutes, see STATUTES VIII

Noerr-Pennington doctrine, see ANTITRUST AND TRADE REGULATION, CONSTITUTIONAL LAW

Public records, see RECORDS

245. LOGS AND LOGGING

Racketeering, see RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Tax issues, see INTERNAL REVENUE, TAXATION

1. In general.
2. Licensing and registration.
3. Expenditures and gifts.
4. Campaign finance restrictions.
See also ELECTION LAW V.
5. Restrictions on employment; “revolving door”.
6. Reporting and disclosure.
7. Administrative agencies and proceedings.
8. Judicial review; actions.
9. Offenses and prosecutions.

245. LOGS AND LOGGING**SUBJECTS INCLUDED**

Cut timber and nature and incidents of rights of property therein

Regulation of the cutting, marking, driving or floating, scaling or other measurement, manufacture into lumber, and sale of logs

Contracts, liens, and remedies relating thereto

Organization, franchises, and powers of log or boom companies, and their rights and liabilities in respect to floatage of logs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indian lands, cutting and sale of timber on, see INDIANS ⇌195

Injuries to riparian proprietors by floating logs, see WATER LAW

Obstructions of navigation by booms, rafts, etc., see WATER LAW

1. Right to cut and remove timber.
 - 1.1. — In general.
2. — Sales and conveyances of timber lands.
3. — Sales and conveyances of standing timber.

(.5). In general.

- (1). Requisites and validity of contracts and conveyances.
- (2). Recording.
- (3). Representations as to quantity or quality.
- (4). Representations as to value.
- (5). Modification, abandonment, or rescission of contract.
- (6). Executed or executory contracts.
- (7). Construction and operation of contracts in general.
- (8). Covenants and warranties.
- (9). Exceptions, reservations, or conditions.
- (10). Construction of contract as to quantity, kind, size, or location of timber sold.
- (11). Construction of contract as to time for removal of timber.
- (12). Bona fide purchasers.
- (13). Payment of price and lien therefor.
- (14). Effect of failure to cut or remove timber.

(15). Actions.

4. — Licenses; severance taxes.
5. — Effect of severance of timber from land.
6. Cutting and hauling logs.
 - 6.1. — In general.
7. — Statutory regulations.
8. — Contracts.
 - (.5). In general.
 - (1). Construction and operation.
 - (2). Abandonment.
 - (3). Performance or breach.
 - (4). Maintenance of highways or railroads.
 - (5). Actions for breach.
9. Marks and brands.
10. Scaling or other measurement.
 - (.5). In general.
 - (1). Agreements as to measurement.
 - (2). Public inspectors and surveyors.
 - (3). Evidence.
 - (4). Questions for jury.
 - (5). Instructions.
11. Driving, floating, or rafting logs.
 - 11.1. — In general.

245. LOGS AND LOGGING

12. — Use of streams for floatage.
13. — Sluice dams, booms, and boom or driving companies.
14. — Tolls and other charges.
15. — Contracts.
 - (.5). In general.
 - (1). Construction and operation in general.
 - (2). Compensation.
 - (3). Modification.
 - (4). Performance or breach.
 - (5). Actions for breach.
16. — Intermingling and confusion.
17. — Compensation for driving intermingled or obstructing logs.
18. — Stranded and lost logs and salvage.
19. — Injuries incident to driving or rafting.
20. — Liabilities of proprietors of booms.
 - (1). In general.
 - (2). Actions.
21. Sawing and manufacturing logs.
22. Liens on logs and lumber.
- 22.1. — In general.
23. — Nature and grounds in general.
24. — Statutory provisions.
25. — Property subject.
26. — Services, supplies, or advances.
 - (.5). In general.
 - (1). Inspecting and scaling logs.
 - (2). Cutting, driving, rafting, or hauling logs.
 - (3). Sawing and manufacturing.
 - (4). Building or repairing road or passageway.
 - (5). Furnishing board, supplies, or advances.
 - (6). Labor or service.
 - (7). Labor of teams.
 - (8). Removal of obstructions.
27. — Persons entitled.
 - (.5). In general.
 - (1). Cutting, driving, rafting, or hauling.
 - (2). Sawing and manufacturing.
 - (3). Supplies.
 - (4). Contractors.
 - (4.5). Subcontractors and employees of contractors.
 - (5). Laborers.

28. — Proceedings to obtain or perfect.
29. — Amount and extent.
30. — Priorities.
31. — Removal or destruction of or injury to logs or lumber.
32. — Waiver, loss, or discharge.
33. — Enforcement.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Conditions precedent.
 - (3). Jurisdiction and venue.
 - (4). Time to sue and limitations.

See also LIMITATION OF ACTIONS.

 - (5). Parties.
 - (6). Process and service.
 - (7). Attachment.
 - (8). Pleading and evidence.
 - (9). Affidavits for foreclosure.
 - (9.5). Questions for jury and instructions.
 - (10). Verdict and findings.
 - (11). Judgment.
 - (12). Execution.
 - (13). Fees and costs.
34. Sale of logs or lumber.

See also SALES.

 - (.5). In general.
 - (1). Contracts of sale.
 - (2). Actions relating to sale.
35. Conversion of logs or lumber.
36. Penalties for violations of regulations.
37. Offenses incident to logging.

246. LOST INSTRUMENTS**SUBJECTS INCLUDED**

Instruments in writing lost or destroyed

Proceedings to restore, establish, or recover on such instruments, and indemnity as a condition thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Finders of lost instruments in general, rights and liabilities, see ABANDONED AND LOST PROPERTY

249. MALICIOUS PROSECUTION

Lost negotiable paper—

Banks' rights and liabilities, see FINANCE, BANKING, AND CREDIT IV

Finders' rights and liabilities, see COMMERCIAL PAPER

Lost or destroyed records, restoration or establishment, see RECORDS

Lost wills, probate of, see WILLS

Secondary evidence of contents of lost writings, see EVIDENCE

1. Loss of written instrument.
2. Establishment and restoration.
 - 2.1. — In general.
3. — Nature and form of remedy.
- 4.5. — Indemnity.
5. — Jurisdiction.
6. — Parties.
7. — Pleading.
8. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
9. — Hearing or reference.
10. — Judgment or decree and review.
11. — Costs.
12. Compelling re-execution.
13. Actions on lost instruments.
 - 13.1. — In general.
14. — Nature and form.
15. — Statutory provisions.
16. — Right of action in general.
17. — Affidavit of loss.
18. — Indemnity.
19. — Defenses.
20. — Jurisdiction.
21. — Parties.
22. — Pleading.
23. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
24. — Trial, judgment, and review.
25. — Costs.

248. MALICIOUS MISCHIEF**SUBJECTS INCLUDED**

Willful physical injury to or destruction of property in general, real or personal, from ill will or resentment towards the owner or possessor, or from mere wantonness

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Fire, injuries by, see ARSON, FIRES

Mere trespasses on real property, see TRESPASS

Particular kinds of property, injury to, see PUBLIC LANDS, RAILROADS, ANIMALS, and other specific topics

1. Nature and elements of offenses.
2. Defenses.
3. Indictment or information.
 - 3.1. — In general.
4. — Requisites and sufficiency.
5. — Issues, proof, and variance.
6. Evidence.
 - 6.1. — In general.
7. — Presumptions and burden of proof.
8. — Admissibility.
9. — Weight and sufficiency.
10. Trial.
12. Sentence and punishment.

249. MALICIOUS PROSECUTION**SUBJECTS INCLUDED**

Institution of judicial proceedings civil or criminal, against another, maliciously and without probable cause therefor

Justification or excuse for such prosecution

Liabilities and remedies therefor, civil or criminal

249. MALICIOUS PROSECUTION**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Abuse of process by perverting it to an improper purpose, see **PROCESS**

Wrongful attachment, see **CREDITORS' REMEDIES**

Wrongful execution, see **CREDITORS' REMEDIES**

**I. NATURE AND COMMENCEMENT OF
PROSECUTION, ¶0.5–14.****II. WANT OF PROBABLE CAUSE,
¶15–25.****III. MALICE, ¶26–33.****IV. TERMINATION OF PROSECUTION,
¶34–37.****V. ACTIONS, ¶38–77.****VI. CRIMINAL RESPONSIBILITY,
¶78–79.****I. NATURE AND COMMENCEMENT
OF PROSECUTION.**

0.5. Nature and elements of malicious prosecution in general.

0.6. What law governs.

0.7. Preemption.

1. Judicial character of proceeding.

2. Jurisdiction of court or magistrate.

3. Instigation of or participation in prosecution.

4. Institution or continuation of prosecution.

5. Criminal prosecutions.

5.1. — In general.

6. — Nature of charge.

7. — Mode and sufficiency of proceeding and necessity of arrest.

8. — Commencement and course of proceeding.

9. Civil actions.

10. — In general.

11. — Necessity of arrest of person or seizure of property.

12. Civil proceedings other than actions.

13. Actions and proceedings in rem.

14. Injury from prosecution.

II. WANT OF PROBABLE CAUSE.

15. Necessity.

16. Concurrence of other elements.

17. Criminal prosecutions.

17.1. — In general.

II. WANT OF PROBABLE CAUSE.(Cont'd)

18. — Grounds in general.

(1). In general.

(2). Acts and conduct of accused evidence of probable cause in general.

(3). Possession of stolen property.

(4). Acts and conduct of defendant evidence of want of probable cause in general.

(5). Personal knowledge and statements of others.

(6). Time of acquiring knowledge or receiving information.

(7). Preliminary investigations by prosecutor.

19. — Actual guilt or innocence of accused.

20. — Belief in guilt of accused.

21. — Advice of counsel.

(1). In general.

(2). Good faith in making statement of facts to counsel and acting on advice.

22. — Advice of prosecuting officer or magistrate.

23. — Inference from malice.

24. — Inference from result of prosecution.

(1). In general.

(2). Acquittal.

(3). Discontinuance and discharge.

(4). Conviction.

(5). Conviction and subsequent discharge or acquittal.

(6). Result of preliminary examination.

(7). Finding of grand jury.

25. Civil actions and proceedings.

(1). In general.

(2). Advice of counsel.

(3). Inference from result of action.

III. MALICE.

26. Necessity.

27. Nature and elements.

28. Express malice.

29. Implied malice in general.

30. Motive of prosecution.

31. Acts and conduct evidence of malice.

249. MALICIOUS PROSECUTION**III. MALICE.**(Cont'd)

- 32. Inference from want of probable cause.
- 33. Inference from result of prosecution.

IV. TERMINATION OF PROSECUTION.

- 34. Necessity.
- 35. Mode of termination.
 - (1). In general.
 - (2). Compromise and settlement.
- 36. Finality of determination.
- 37. Scope and effect of determination.

V. ACTIONS.

- 38. Nature and form of remedy.
- 39. Grounds of action.
- 40. Defenses.
- 41. Persons entitled to sue.
- 42. Persons liable.
- 43. Jurisdiction and venue.
- 44. Time to sue and limitations.
 - See also LIMITATION OF ACTIONS.*
- 45. Parties.
- 46. Pleading.
- 46.1. — In general.
- 47. — Requisites and sufficiency in general.
- 48. — Description of prosecution.
- 49. — Want of probable cause.
- 50. — Malice.
- 51. — Termination of prosecution.
- 52. — Damage.
- 53. — Matters of defense.
- 54. — Amended and supplemental pleadings.
- 55. — Issues, proof, and variance.
- 56. Presumptions and burden of proof.
- 57. Admissibility of evidence.
- 58. — In general.
 - (1). In general.
 - (2). Character and reputation of plaintiff.
 - (3). Evidence as to former trial, or proceeding.
- 59. — Probable cause.
 - (1). In general.
 - (2). Statements and declarations of parties.
 - (3). Statements of third persons.

V. ACTIONS.(Cont'd)

- (4). Character and reputation of plaintiff.
- (5). Acts and conduct of accused in general.
- (6). Evidence of other offenses.
- (7). Evidence as to former trial or proceeding.
- (8). Guilt or innocence of accused.
- (9). Belief in guilt of accused.
- (10). Advice of counsel.
- 60. — Malice.
 - (1). In general.
 - (2). Previous relations between parties.
 - (3). Acts, conduct, and declarations of parties.
 - (4). Advice and statement of counsel.
 - (5). Evidence as to prosecutions complained of or other actions and proceedings.
- 61. — Termination of prosecution.
- 62. — Extent of injury.
- 63. — Mitigation of damages.
- 64. Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Probable cause and malice.
- 65. Damages.
 - 65.1. — In general.
- 66. — Measure in general.
- 67. — Elements of compensation.
- 68. — Exemplary.
- 69. — Amount awarded.
- 71. Questions for jury.
 - (1). In general.
 - (2). Probable cause.
 - (3). Malice.
 - (4). Advice of counsel, prosecuting officer, or magistrate.
 - (5). Termination of prosecution.
- 72. Instructions.
 - (1). In general.
 - (2). Probable cause.
 - (3). Advice of counsel, prosecuting officer, or magistrate.
 - (4). Malice.
 - (5). Damages.
- 73. Verdict and findings.
- 74. New trial.

249. MALICIOUS PROSECUTION**V. ACTIONS.**(Cont'd)

- 75. Judgment.
- 76. Appeal and error.
- 77. Costs.

VI. CRIMINAL RESPONSIBILITY.

- 78. Nature and elements of offenses.
- 79. Prosecution and punishment.

250. MANDAMUS**SUBJECTS INCLUDED**

Writs of mandamus or of mandate commanding performance of specific acts by inferior courts or other tribunals, judges, boards, officers, or corporations, and actions in the nature of such writs

Nature and scope of the remedy in general

Grounds of such writs or actions and defenses thereto

To and against whom and to compel performance of what acts they are allowed

Jurisdiction to grant and proceedings to obtain the writ

Issuance of alternative or peremptory writs, requisites, and validity thereof, service thereof, return to alternative writs, and proceedings thereon

In actions for mandamus, judgments or orders and enforcement thereof

Review of proceedings and costs

Disobedience to such writs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conflicting jurisdiction of particular courts, see **COURTS**

Federal courts, mandamus in general, see **FEDERAL COURTS**

Mandates to lower courts on decisions of appeals, etc., see **APPEAL AND ERROR** and **FEDERAL COURTS**

Mandatory injunction, see **INJUNCTION**

Other remedies or proceedings, mandamus incidental to, see **APPEAL AND ERROR**,

EXCEPTIONS, **BILL OF**, and other specific topics

I. NATURE AND GROUNDS IN GENERAL, ¶1–23.

II. SUBJECTS AND PURPOSES OF RELIEF, ¶24–140.

(A) **ACTS AND PROCEEDINGS OF COURTS, JUDGES, AND JUDICIAL OFFICERS**, ¶24–62.

(B) **ACTS AND PROCEEDINGS OF PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES**, ¶63–121.

(C) **ACTS AND PROCEEDINGS OF PRIVATE CORPORATIONS AND INDIVIDUALS**, ¶122–140.

III. JURISDICTION, PROCEEDINGS, AND RELIEF, ¶141–190.

I. NATURE AND GROUNDS IN GENERAL.

1. Nature and scope of remedy in general.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedy in general.
 - (1). In general.
 - (2). Remedy at law.
 - (2.1). — In general.
 - (3). — Acts and proceedings of courts, judges, and judicial officers.
 - (4). — Acts and proceedings of public officers and boards and municipalities in general.
 - (5). — Counties or towns and their boards or officers.
 - (6). — Issue of warrants and payment thereof or of claims.
 - (7). — Acts and proceedings of private corporations and individuals.
 - (8). Statutory or administrative remedies.
 - (9). Remedy in equity.
 - (10). Remedy by quo warranto.
 - (11). Remedy by motion or other proceeding in pending cause in general.
 - (12). Remedy by certiorari.
 - (13). Remedy by motion for new trial.
4. Remedy by appeal or writ of error.
 - (1). In general.

250. MANDAMUS**I. NATURE AND GROUNDS
IN GENERAL.**(Cont'd)

- (2). Rulings as to pleadings.
- (3). Motions and orders in general.
- (4). Modification or vacation of judgment or order.
- (5). Acts of officers, boards, or private corporations.
- 5. Recourse to or pendency of other proceeding.
- 6. Conflict or interference with other proceeding.
- 6.5. Adequacy of remedy by mandamus.
- 7. Discretion as to grant of writ.
- 8. Joinder of proceedings.
- 9. Successive writs or proceedings.
- 10. Nature and existence of rights to be protected or enforced.
- 11. Nature of questions involved.
- 12. Nature of acts to be commanded.
- 13. Conditions precedent in general.
- 14. Demand.
 - (.5). In general.
 - (1). Necessity of demand.
 - (2). Requisites and sufficiency of demand.
 - (3). Refusal or default.
- 15. Defenses and grounds of opposition in general.
- 16. Mandamus ineffectual or not beneficial.
 - (1). In general.
 - (2). Expiration of term of office or adjournment of boards.
- 17. Abatement of proceedings.
- 18. — In general.
- 19. — Termination or devolution of right or office.
- 20. — Death of party.
- 21. Persons entitled to relief.
- 22. — In general.
- 23. — Interest in subject-matter.
 - (1). In general.
 - (2). Interest as citizens or taxpayers.

II. SUBJECTS AND PURPOSES OF RELIEF.**(A) ACTS AND PROCEEDINGS OF COURTS,
JUDGES, AND JUDICIAL OFFICERS.**

- 24. Courts and judicial officers subject to mandamus.
- 25. Judicial nature of acts or proceedings.

**II. SUBJECTS AND PURPOSES
OF RELIEF.**(Cont'd)

- 26. Exercise of judicial powers and functions in general.
- 27. Ministerial acts in general.
- 28. Matters of discretion.
- 29. Specific acts.
- 30. Holding court.
- 31. Entertaining and proceeding with cause.
- 32. Proceedings in civil actions in general.
- 33. Parties.
- 34. Process and notice.
- 35. Bonds and other securities.
- 36. Attachment and garnishment.
- 37. Injunction.
- 38. Receivers and sequestration.
- 39. Pleading.
- 40. Evidence, witnesses, and depositions.
- 41. Stipulations.
- 42. Motions and orders in general.
- 43. Dismissal or nonsuit, and reinstatement.
- 44. Change of venue and transfer of causes.
- 45. Continuance.
- 46. Trial by jury.
- 47. Reference.
- 48. Trial or hearing of cause or issues.
- 49. Reception and entry of verdict.
- 50. New trial or rehearing.
- 51. Signing or entry of judgment or order.
- 52. Modification of judgment or order.
- 53. Vacation of judgment or order.
- 54. Enforcement of judgment or order in general.
- 55. Execution.
- 56. Judicial sales.
- 57. Proceedings for review.
 - (1). In general.
 - (2). Fixing amount and approval of bond.
- 58. Enforcement of decision on review.
- 59. Award and taxation of costs.
- 60. Civil proceedings other than actions.
- 61. Criminal prosecutions.
- 62. Dockets, calendars, and records.
- (B) ACTS AND PROCEEDINGS OF PUBLIC
OFFICERS AND BOARDS AND
MUNICIPALITIES.**
- 63. Officers subject to mandamus in general.
- 64. State or national boards and officers.

250. MANDAMUS**II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)**

- 65. County or town boards and officers.
- 66. Municipalities and municipal officers in general.
- 67. School boards, trustees, and officers.
- 68. Official character of acts or proceedings.
- 69. Legislative powers.
- 70. Judicial or quasi judicial powers and functions.
- 71. Ministerial acts in general.
- 72. Matters of discretion.
- 73. Specific acts.
 - (1). In general.
 - (2). Approval or acceptance of bonds.
 - (3). Admission of matter to mails.
 - (4). Apportionment of indebtedness between counties.
 - (5). Setting aside exemptions.
- 74. Elections and proceedings relating thereto.
 - (1). In general.
 - (2). Calling of election and registration of voters.
 - (3). Announcing candidacy, placing names on ballot, and filing and certifying ticket.
 - (4). Counting ballots and canvassing returns.
 - (5). Announcing or certifying results.
- 75. Acts and proceedings of civil service boards and commissions.
- 76. Appointment or removal of public officers or employees.
- 77. Title to and possession of office.
 - (1). In general.
 - (2). Administering oath and issuing commission or certificate.
 - (3). Possession of office and appurtenances.
 - (4). Restoration to office or employment.
- 78. Organization and location of local governments or authorities.
- 79. Establishment, maintenance, and management of schools.
- 80. Establishment, maintenance, and management of public institutions.
- 81. Meetings and proceedings of boards or other bodies.

**II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)**

- 82. Public records.
- 83. Public buildings and other property.
- 84. Contracts in general.
- 85. Proceedings relating to public lands.
- 86. Proceedings relating to patents.
- 87. Proceedings to procure and grant or revoke licenses, certificates, and permits.
- 88. Issuance and forfeiture of corporate charters.
- 89. Public improvements.
- 89.1. — In general.
- 90. — Construction in general.
- 91. — Grants of public aid.
- 92. — Award of contracts.
- 93. — Performance of contracts.
- 94. — Maintenance and repair.
- 95. — Award and payment of damages.
- 96. — Levy of assessments and special taxes.
- 97. — Collection of assessments and special taxes.
- 98. Establishment, vacation, regulation, and use of highways and streets.
 - (.5). In general.
 - (1). Establishment and vacation.
 - (2). Removal of obstructions in streets or highways.
 - (3). Use of streets.
- 99. Making and enforcement of police and zoning regulations.
- 100. Appropriation or other disposition of public money.
- 101. Audit and allowance of accounts and claims.
- 102. Issue of warrants or orders for payment.
 - (1). In general.
 - (2). Claims of public officers and employees.
- 103. Issue of bonds or other securities.
- 104. Payment of debts and claims.
- 105. — In general.
- 106. — Appropriations and special funds.
- 107. — Salaries and wages.
- 108. — Claims allowed or approved.
- 109. — Warrants or orders.
- 110. — Bonds or other securities.
- 111. — Judgments.
- 112. Levy of taxes.

250. MANDAMUS**II. SUBJECTS AND PURPOSES
OF RELIEF.**(Cont'd)

- 112.1. — In general.
- 113. — Purposes in general.
- 114. — Payment of claims, warrants, or orders.
- 115. — Payment of bonds or other securities.
- 116. — Payment of judgments.
- 117. Assessment of taxes.
- 118. Payment and refunding of taxes.
- 119. Collection of taxes.
- 120. Redemption from tax sales.
- 121. Disposition of taxes collected.

**(C) ACTS AND PROCEEDINGS OF PRIVATE
CORPORATIONS AND INDIVIDUALS.**

- 122. Corporations and associations subject to mandamus.
- 123. Organization of corporation or association.
- 124. Admission to membership in corporation or association.
- 125. Reinstatement of member of corporation or association expelled or suspended.
- 126. Issue, transfer, and redemption of stock.
- 127. Corporate meetings and elections.
- 128. Title to and possession of corporate office.
- 129. Custody of and access to corporate records and books.
- 130. Exercise of corporate franchises and powers.
- 131. — In general.
- 132. — Construction and maintenance of works.
- 133. — Operation of works, and public service and accommodation.
- 134. — Charges, tolls, and other compensation.
- 135. Management of corporate affairs.
- 136. — In general.
- 137. — Matters of discretion or of quasi judicial character.
- 138. Performance of corporate contracts.
- 139. Franchises, privileges, and duties of foreign corporations.
- 140. Individual duties and obligations.

**III. JURISDICTION, PROCEEDINGS,
AND RELIEF.**

- 141. Jurisdiction and authority.
- 142. Venue.
- 143. Time to sue, limitations, and laches.
 - (1). In general.
See also LIMITATION OF ACTIONS.
 - (2). Laches.
- 144. Parties plaintiff or petitioners.
- 145. — In general.
- 146. — Use of name of state.
- 147. — Public officers.
- 148. — Private persons.
- 149. — Joinder.
- 150. Parties defendant or respondents.
- 151. — In general.
 - (1). In general.
 - (2). Public officers and boards and municipalities.
- 152. — Joinder.
- 153. New parties.
- 154. Petition or complaint, or other application.
 - (1). In general.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Certainty and definiteness.
 - (4). Right of petitioner, and authority, duty, or power of respondent, in general.
 - (5). Allegations relating to elections and appointment to or removal from office.
 - (6). Allegations showing official character.
 - (7). Demand and refusal or default.
 - (8). Prayer for relief.
 - (9). Verification.
 - (10). Amendment.
- 155. Affidavits.
 - (.5). In general.
 - (1). Supporting affidavits.
 - (2). Opposing affidavits.
- 155.5. Bill of exceptions.
- 156. Process in general.
- 157. Notice or rule to show cause.
- 158. Alternative writ.
- 158.1. — In general.
- 159. — Nature and grounds.
- 160. — Issuance, form, and requisites.

250. MANDAMUS

- III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)**
- (1). In general.
 - (2). Allegations showing right of relator.
 - (3). Demand and refusal.
 - (4). Conclusions.
 - (5). Direction to persons sought to be coerced.
 - (6). Commands in writ.
 - (7). Amendment and cure of defects.
- 161. — Service.
 - 162. Motion to quash or dismiss alternative writ.
 - 163. Demurrer to petition or complaint, or to alternative writ.
 - 164. Return or answer.
 - (1). In general.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Denials and failure to deny.
 - (4). Conclusiveness and effect.
 - (5). Amendment.
 - 165. Demurrer to return or answer.
 - 166. Replication or reply and rejoinder.
 - 166.5. Demurrer to replication or reply.
 - 167. Issues, proof, and variance.
 - 168. Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency.
 - 169. Dismissal before hearing.
 - 170. Mode of trial in general.
 - 171. Proceedings preliminary to hearing or trial.
 - 172. Scope of inquiry and powers of court.
 - 173. Conduct of hearing or trial.
 - 174. Determination of issues and questions.
 - 175. New trial or rehearing.
 - 176. Scope and extent of relief in general.
 - 177. Award and assessment of damages.
 - 178. Judgment or order.
 - 179. Peremptory writ.
 - 179.1. — In general.
 - 180. — Nature and grounds.

- III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)**
- 181. — Proceedings to procure.
 - (.5). In general.
 - (1). Application and supporting affidavits.
 - (2). Notice.
 - (3). Issuance on default.
 - (4). Denial or justification of facts.
 - (5). Grant of alternative writ on denial of application.
 - (6). Alias writs.
 - 182. — Issuance, form, and requisites.
 - 183. — Service.
 - 183.5. — Return or certificate.
 - 184. — Operation and effect.
 - 185. Performance and enforcement of command.
 - 186. Violation and punishment.
 - 187. Appeal and error.
 - 187.1. — In general.
 - 187.2. — Decisions reviewable and proper mode of review.
 - 187.3. — Right of review.
 - 187.4. — Presentation and reservation in lower court of grounds of review.
 - 187.5. — Requisites and proceedings for transfer of cause.
 - 187.6. — Supersedeas or stay of proceedings.
 - 187.7. — Record and assignments of error.
 - 187.8. — Dismissal of appeal.
 - 187.9. — Review.
 - (.5). In general.
 - (1). Scope and extent in general.
 - (2). Questions considered.
 - (3). Parties entitled to allege error.
 - (4). Presumptions.
 - (5). Discretion of lower court.
 - (6). Questions of fact.
 - (7). Harmless error.
 - 187.10. — Determination and disposition of cause.
 - 188. Certiorari to review proceedings.
 - 189. Mandamus to review proceedings.
 - 190. Costs.

252. MARITIME LIENS**251. MANUFACTURES****SUBJECTS INCLUDED**

Promotion and regulation of manufacturing industries in general

Public aid and protection to those engaged therein, either individuals or manufacturing companies

Rights and remedies incidental thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate matters analogous to those of corporations generally, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Eminent domain, exercise of power, see **EMINENT DOMAIN**

Employer-employee relations, see **LABOR AND EMPLOYMENT**

Health and safety regulations, see **HEALTH AND ENVIRONMENTAL LAW**

Licenses and mercantile taxes, see **LICENSES**

Particular motive powers, use of, see **GAS, ELECTRICITY, STEAM**

Taxes on property, see **TAXATION**

1. Constitutional and statutory provisions.
2. Rights, privileges, and regulations of public mills.

252. MARITIME LIENS**SUBJECTS INCLUDED**

Liens created by maritime law or by statute on vessels, more particularly such liens as security for the price or value of services rendered or supplies furnished to vessels, or for repayment of moneys advanced to them

Nature and grounds of such liens

What vessels or other property may be subject to such liens, and by whom or for what purposes they may be subjected thereto

Who may be entitled to the benefit of such liens

How the liens may be acquired, and waiver, discharge, or extinguishment thereof

Priorities of such liens

Enforcement of maritime liens in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty jurisdiction and procedure, see **ADMIRALTY**

Damages for injuries by collision or other torts, liens for, see **SHIPPING**

Master's lien for wages, etc., see **SHIPPING**

Mortgages of vessels, bottomry, and respondentia, see **SHIPPING**

Mutual liens of vessel and cargo, see **SHIPPING**

Salvage services, lien for, see **SALVAGE**

Services incident to particular occupations, liens for, see **SEAMEN, PILOTS, TOWAGE**

- I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL, ¶1-25.5.
 - (A) UNDER MARITIME LAW, ¶1-15.
 - (B) UNDER STATUTORY PROVISIONS, ¶16-25.5.
- II. CREATION, OPERATION, AND EFFECT, ¶26-54.
- III. ENFORCEMENT, ¶55-75.
 - (A) IN ADMIRALTY, ¶55-70.
 - (B) STATUTORY REMEDIES, ¶71-75.

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.**(A) UNDER MARITIME LAW.**

1. Nature of lien in general.
2. What law governs.
3. Vessels and other property subject to lien in general.
4. Ownership, charter, or possession of vessel.
5. Vessel in home or foreign port.
6. Persons who may obtain lien.
7. Necessity for services, supplies, or advances.
8. Necessity for credit to vessel.
9. Maritime services in general.
10. Construction and equipment.
11. Repairs and materials.
12. Supplies.
13. Insurance premiums.

252. MARITIME LIENS**I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.**(Cont'd)

- 14. Advances.
- 15. Guaranties.

(B) UNDER STATUTORY PROVISIONS.

- 16. Power to impose or authorize liens.
- 17. Constitutional and statutory provisions.
- 18. Existence and effect of lien under maritime law.
- 19. Vessels and other property subject to lien.
- 20. Vessel in home port.
- 21. Ownership, charter, or possession of vessel.
- 22. Persons who may obtain lien.
- 23. Necessity for services, supplies, or advances.
- 24. Necessity of credit to vessel.
- 25. Services, supplies, repairs, or materials.
- 25.5. Advances.

II. CREATION, OPERATION, AND EFFECT.

- 26. Requisites and creation in general.
- 27. Rendering or furnishing of services, supplies, or advances.
- 28. Agreement or consent of owner, charterer, or master of vessel.
- 29. Transactions with persons other than owner, charterer, or master of vessel.
- 30. Notice of circumstances affecting right to lien.
- 31. Persons entitled to lien.
- 32. Proceedings to perfect statutory lien.
- 33. Amount and extent of lien.
- 34. Commencement and duration of lien.
- 35. Property and rights affected.
- 36. Priorities.
- 36.1. — In general.
- 37. — Liens under maritime law.
 - (1). In general.
 - (2). Institution of legal proceedings for enforcement.
 - (3). Between maritime and statutory liens.
 - (4). Mortgages and bottomry bonds.
 - (5). Seamen's and master's wages.
 - (6). Maritime torts.
 - (7). Loss of priority.
- 38. — Statutory liens.
- 39. Assignment of lien or claim.

II. CREATION, OPERATION, AND EFFECT.(Cont'd)

- 40. Waiver, loss, or discharge.
- 40.1. — In general.
- 41. — Express waiver.
- 42. — Giving credit.
- 43. — Taking bill or note.
- 44. — Taking collateral security.
- 45. — Destruction of vessel.
- 46. — Departure of vessel.
- 47. — Transfer of title in general.
- 48. — Forfeiture, seizure, or judicial sale.
- 49. — Delay in assertion of lien in general.
- 50. — Delay in assertion of lien against bona fide purchasers.
- 51. — Discharge from personal liability.
- 52. — Discharge on giving security.
- 53. — Release.
- 54. — Payment or tender of debt.

III. ENFORCEMENT.**(A) IN ADMIRALTY.**

- 55. Nature and form of remedy.
- 56. — In general.
- 57. — Liens under state statutes.
- 58. Grounds of action.
- 59. Defenses.
- 60. Jurisdiction.
- 61. Time for proceedings, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 62. Parties.
- 63. Process.
- 64. Pleading.
- 65. Evidence.
- 66. Hearing or trial.
- 67. Decree.
- 68. Sale.
- 69. Disposition of proceeds.
- 70. Appeal.

(B) STATUTORY REMEDIES.

- 71. Nature and form in general.
- 72. Retention of possession.
- 73. Attachment.
- 74. Actions against vessels or owners.
- 75. Actions on bonds.

253. MARRIAGE AND COHABITATION**253. MARRIAGE AND
COHABITATION****SUBJECTS INCLUDED**

Nature, creation, existence, validity, and annulment of the marriage relation

Rights, powers, duties, and liabilities of married persons as between themselves and as to others, incident to the existence of the relation or arising from conveyances or agreements in consideration or in consequence of marriage

Legal proceedings affecting married persons and their property

Adultery, bigamy, and other offenses concerning the relation

Enforcement of spousal support obligation outside the context of divorce proceedings

Civil unions, domestic partnerships, and similar alternatives to marriage

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Children and relation of parents thereto, see ADOPTION, CHILD CUSTODY, CHILD SUPPORT, INFANTS, PARENT AND CHILD

Dissolution of marriage, see DIVORCE

Divorce, see DIVORCE

Dower and curtesy, see DESCENT AND DISTRIBUTION IV

Fraudulent conveyances, see FRAUDULENT CONVEYANCES

Homestead rights and exemptions, see HOMESTEAD

Judicial separation, see DIVORCE

Seduction as a tort or criminal offense, with or without promise to marry, see SEDUC-TION

Separation agreements, see DIVORCE

Spousal privilege, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY II(B)

Spousal support obligation, enforcement in divorce context, see DIVORCE

Surviving spouse's property rights, see DESCENT AND DISTRIBUTION, HOMESTEAD III, WILLS

Testamentary capacity, see WILLS II

Witnesses, competency of spouses to testify for or against each other, see WITNESSES ¶51

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- I. IN GENERAL, ¶101–120.
- II. AGREEMENTS CONCERNING MARRIAGE, ¶121–200.
- (A) IN GENERAL, ¶121–130.
- (B) AGREEMENTS TO MARRY; BREACH OF MARRIAGE PROMISE, ¶131–160.
- (C) PREMARITAL AGREEMENTS, ¶161–200.
- III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP, ¶201–400.
- (A) IN GENERAL; REQUISITES AND ESSENTIALS, ¶201–250.
- (B) VALIDITY AND EFFECT OF FOREIGN MARRIAGE, ¶251–260.
- (C) EFFECT OF IMPROPER MARRIAGE; VOID OR VOIDABLE MARRIAGE, ¶261–290.
- (D) DURATION AND TERMINATION OF MARRIAGE IN GENERAL, ¶291–299.
- (E) ACTIONS AND PROCEEDINGS IN GENERAL, ¶300–310.
- (F) ANNULMENT AND ANNULMENT PROCEEDINGS, ¶311–350.
- (G) EVIDENCE, ¶351–390.
- (H) QUESTIONS OF LAW OR FACT, ¶391–394.
- (I) INSTRUCTIONS, ¶395–400.
- IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL, ¶401–750.
- (A) IN GENERAL, ¶401–420.
- (B) PROPERTY IN GENERAL, ¶421–510.
1. IN GENERAL, ¶421–450.
2. JOINT TENANCY, ¶451–460.
3. TENANCY IN COMMON, ¶461–470.
4. TENANCY BY ENTIRETY, ¶471–500.
5. RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY, ¶501–510.
- (C) CONTRACTS IN GENERAL, ¶511–530.
- (D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS IN GENERAL, ¶531–570.
- (E) NECESSARIES AND FAMILY EXPENSES, ¶571–590.

253. MARRIAGE AND COHABITATION**IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL—Cont'd****(F) PROPERTY TRANSACTIONS BY SPOUSES, ☞591–620.****(G) AGENCY, ☞621–640.****(H) TRANSACTIONS BETWEEN SPOUSES, ☞641–690.****(I) RIGHTS OF ACTION AND DEFENSES, ☞691–720.****(J) PROCEEDINGS, ☞721–750.****V. COMMUNITY PROPERTY, ☞751–1070.****(A) IN GENERAL, ☞751–770.****(B) PROPERTY SUBJECT TO COMMUNITY; CHARACTERIZATION, ☞771–890.****1. IN GENERAL, ☞771–790.****2. PARTICULAR PROPERTY, ☞791–820.****3. PARTICULAR CIRCUMSTANCES OF ACQUISITION OR POSSESSION, ☞821–850.****4. EVIDENCE, ☞851–880.****5. QUESTIONS OF LAW OR FACT, ☞881–890.****(C) RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY, ☞891–900.****(D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS, ☞901–920.****(E) PROPERTY TRANSACTIONS BY SPOUSES, ☞921–950.****(F) TRANSACTIONS BETWEEN SPOUSES, ☞951–980.****(G) REIMBURSEMENT RIGHTS BETWEEN SPOUSES, ☞981–1000.****(H) RIGHTS OF ACTION AND DEFENSES, ☞1001–1010.****(I) PROCEEDINGS, ☞1011–1040.****(J) DESCENT AND DISTRIBUTION, ☞1041–1070.****VI. TORTS, ☞1071–1130.****(A) IN GENERAL, ☞1071–1100.****(B) ALIENATION OF AFFECTIONS, ☞1101–1120.****(C) ADULTEROUS CONDUCT; CRIMINAL CONVERSATION, ☞1121–1130.****VII. OFFENSES, ☞1131–1200.****(A) IN GENERAL, ☞1131–1140.****(B) ADULTERY, ☞1141–1160.****(C) COHABITATION, ☞1161–1170.****(D) BIGAMY AND POLYGAMY, ☞1171–1200.****VIII. ENFORCEMENT OF SUPPORT OBLIGATION, ☞1201–1260.****IX. MARRIAGE ALTERNATIVES, ☞1261–1278.****I. IN GENERAL.**

101. In general.

102. Right to marry or cohabit in general.

103. Regulation and control in general.

104. Constitutional provisions, statutes, and ordinances in general.

105. What law governs.

106. — In general.

107. — Premarital agreements.

108. — Persons who may marry; same-sex marriage.

109. — Marital rights, duties, and liabilities.

(1). In general.

(2). Community property.

(3). Torts.

110. — Offenses.

111. — Enforcement of support obligation.

112. — Marriage alternatives.

(1). In general.

(2). Same-sex relationships.

113. Federal preemption.

114. — In general.

115. — Premarital agreements.

116. — Persons who may marry; same-sex marriage.

117. — Marital rights, duties, and liabilities.

118. — Community property.

119. Actions and proceedings in general.

II. AGREEMENTS CONCERNING MARRIAGE.**(A) IN GENERAL.**

121. In general.

122. Agreements restraining or derogating marriage in general.

123. Agreements facilitating or promoting termination of marriage.

124. Agreements arranging or brokering marriage.

(B) AGREEMENTS TO MARRY; BREACH OF MARRIAGE PROMISE.

131. In general.

132. Requisites and formation.

133. — In general.

134. — Capacity and character of parties.

135. — Offer and acceptance.

136. — Consideration and mutuality.

253. MARRIAGE AND COHABITATION**II. AGREEMENTS CONCERNING
MARRIAGE.(Cont'd)**

- 137. Validity and enforceability.
- 138. Terms of agreement; rights and obligations of parties.
- 139. — In general.
- 140. — Construction in general.
- 141. — Performance and breach in general.
- 142. — Particular cases and issues.
- 143. Modification or rescission.
- 144. Right of action; effect of statute.
- 145. — In general.
- 146. — Particular cases and agreements.
- 147. Nature and form of action.
- 148. Conditions precedent to action.
- 149. Defenses.
- 150. Proceedings.
- 151. — In general.
- 152. — Time for proceedings; limitations and laches.
- 153. — Pleading.
- 154. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Character and conduct of parties.
 - (4). Weight and sufficiency.
- 155. — Damages.
 - (1). In general.
 - (2). Aggravation, mitigation, and reduction of loss.
 - (3). Punitive or exemplary damages.
 - (4). Amount awarded.
- 156. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.

(C) PREMARITAL AGREEMENTS.

Postnuptial agreements and settlements, see IV(H).

- 161. In general.
- 162. Requisites and formation.
- 163. — In general.
- 164. — Consideration.
- 165. — Execution, acknowledgment, and delivery.
- 166. — Registration and recording.
- 167. Validity and enforceability.

**II. AGREEMENTS CONCERNING
MARRIAGE.(Cont'd)**

- 168. — In general.
- 169. — Public policy.
- 170. — Unconscionability.
- 171. — Knowledge and disclosure.
 - (1). In general.
 - (2). Schedule or description of property.
- 172. — Fraud and misrepresentation.
- 173. — Duress, coercion, and undue influence.
- 174. — Legal representation or advice.
- 175. — Adequacy of provision for spouse.
- 176. — Changed circumstances.
- 177. — Effect of invalidity; severability.
- 178. Terms of agreement; rights and obligations of parties.
- 179. — In general.
- 180. — Construction and operation in general.
- 181. — Performance and breach in general.
- 182. — Particular cases and contexts.
 - (1). In general.
 - (2). Estate created or interest conferred.
 - (3). Property included or affected.
 - (4). Rights of survivor.
 - (5). Rights of children or heirs.
 - (6). Rights of creditors and third persons.
 - (7). Effect of subsequent misconduct.
- 183. Modification.
- 184. Revocation or extinguishment.
- 185. Actions and proceedings.
- 186. — In general.
- 187. — Pleading or motion.
- 188. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.
- 189. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.

253. MARRIAGE AND COHABITATION**II. AGREEMENTS CONCERNING
MARRIAGE.**(Cont'd)

190. — Judgment.
191. — Costs and fees.

**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.****(A) IN GENERAL; REQUISITES AND ESSENTIALS.**

201. In general.
202. Intent, consent, and agreement in general.
203. — In general.
204. — Consent of parent, guardian, or other third person.
205. Formal or ceremonial marriage.
206. — In general.
207. — Solemnization or celebration.
208. — Customs of particular sects or societies.
209. — Authority to perform or officiate.
210. — Liabilities of person performing or officiating.
211. Informal or nonceremonial marriage.
212. — In general.
213. — Common-law marriage in general.
214. — De facto marriage in general.
215. — Intent and consent; agreement of parties.
 (1). In general.
 (2). Present or future.
216. — Declaration, acknowledgment, or avowal.
217. — Cohabitation, reputation, or holding out.
 Civil unions, domestic partnerships, and similar alternatives to marriage, see IX.
218. Proxy marriage.
219. Modified, limited, or trial marriage.
220. Covenant marriage.
221. Persons who may marry.
222. — In general.
223. — Age.
224. — Physical capacity.
225. — Mental capacity.
226. — Race or color.
227. — Sex or gender; same-sex marriage.
 (1). In general.
 (2). Transsexual or transgender persons.
228. — Civil status or condition.

Inmates and prisoners, see also PRISONS ⚭113.
Convicts, see also CONVICTS ⚭21, 22. *Aliens, see also ALIENS, IMMIGRATION, AND CITIZENSHIP.*
Divorced persons, see also DIVORCE ⚭1363.

229. — Consanguinity or affinity.
230. — Prior existing marriage; bigamy and polygamy.
 Offense of bigamy or polygamy, see VII(D).
231. Notice or publication of bans.
232. Licenses and licensing officers.
233. — In general.
234. — Necessity of license.
235. — Requisites and validity of license.
236. — Authority to issue license.
237. — Duties of officers in general.
238. — Liability of officers and bondsmen in general.
239. — Actions against officers or bondsmen.
240. Certificate.
241. Return, record, and registration.
242. Confidential marriage.
243. Consummation.
244. Fraud or misrepresentation.
 Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ⚭238, 264, 428, 784.
245. Duress or coercion.

**(B) VALIDITY AND EFFECT OF
FOREIGN MARRIAGE.**

251. In general.
252. Informal or nonceremonial foreign marriage in general.
253. Marriage under tribal laws or customs.
254. Marriage under laws of foreign country.
255. — In general.
256. — Informal or nonceremonial marriage.
257. Same-sex or other nontraditional marriage.
258. — In general.
259. — Marriage under laws of foreign country.

**(C) EFFECT OF IMPROPER MARRIAGE;
VOID OR VOIDABLE MARRIAGE.**

261. In general.
262. Particular defects, effect of.
263. — In general.
264. — Age.
265. — Physical or mental capacity.
266. — Race or color.

253. MARRIAGE AND COHABITATION**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.(Cont'd)**

- 267. — Sex or gender; same-sex marriage.
- 268. — Civil status or condition.
- 269. — Consanguinity or affinity.
- 270. — Prior existing marriage; bigamy and polygamy.
Offense of bigamy or polygamy, see VII(D).
- 271. — Formal requirements.
 - (1). In general.
 - (2). Licenses, certificates, recording, and registration.
- 272. — Consummation.
- 273. — Fraud or misrepresentation.
Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶238, 264, 428, 784.
- 274. — Duress or coercion.
- 275. Effect of ignorance or good faith; putative marriage.
- 276. Informal or nonceremonial marriage, effect of defects in.
- 277. Foreign marriage, effect of defects in.
- 278. Curative statutes.
- 279. Waiver and estoppel.
- 280. Ratification.

**(D) DURATION AND TERMINATION
OF MARRIAGE IN GENERAL.***Divorce, see DIVORCE.*

- 291. In general.
- 292. Separation in general.
- 293. Abandonment.
- 294. Imprisonment or involuntary absence.

(E) ACTIONS AND PROCEEDINGS IN GENERAL.*Proceedings to challenge validity of or annul marriage, see III(F).*

- 300. In general.
- 301. Persons entitled to sue; standing.
- 302. Time to sue; limitations and laches.
- 303. Jurisdiction and venue.
- 304. Process or notice.
- 305. Parties.
- 306. Pleading.
- 307. Trial or hearing.
- 308. Judgment or decree.

(F) ANNULMENT AND ANNULMENT PROCEEDINGS.*Proceedings for confirmation of disputed marriage, see III(E).*

- 311. In general.

**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.(Cont'd)**

- 312. Nature and form of remedy.
- 313. Grounds.
- 314. — In general.
- 315. — Age.
- 316. — Physical capacity.
- 317. — Mental capacity.
- 318. — Prior existing marriage; bigamy and polygamy.
Offense of bigamy or polygamy, see VII(D).
- 319. — Consummation.
- 320. — Mistake.
- 321. — Fraud or misrepresentation.
Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶238, 264, 428, 784.
- 322. — Duress or coercion.
- 323. Defenses.
- 324. Proceedings.
 - 325. — In general.
 - 326. — Persons entitled to sue; standing.
 - 327. — Time to sue; limitations and laches.
- 328. — Jurisdiction and venue.
- 329. — Process or notice.
- 330. — Parties.
- 331. — Pleading.
- 332. — Trial or hearing.
- 333. Scope and extent of relief.
- 334. — In general.
- 335. — Alimony and allowances.
- 336. — Restitution or other disposition of property, and compensation.
- 337. Judgment or decree.
- 338. Operation and effect.
- 339. Review.
- 340. Costs and fees.

(G) EVIDENCE.*Evidence in prosecutions for marriage-related offenses, see also ¶1145, 1164, 1175.*

- 351. In general.
- 352. Presumptions and inferences.
 - 353. — In general.
 - 354. — Presumption of validity in general.
 - 355. — Presumptions from records or lack of records.
- 356. — Presumptions from acts, declarations, and admissions of parties.

253. MARRIAGE AND COHABITATION**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.(Cont'd)**

- 357. — Presumptions as to informal or nonceremonial marriages.
 - (1). In general.
 - (2). Presumptions from cohabitation, reputation, or holding out.
- 358. — Presumptions as to second marriage during lifetime of prior spouse in general.
- 359. — Presumptions as to death of or divorce from prior spouse.
- 360. — Presumptions as to foreign marriages.
- 361. — Presumptions as to continuance of relation.
- 362. — Conflicting presumptions.
- 363. — Rebuttal of presumptions.
- 364. Burden of proof.
- 365. — In general.
- 366. — Informal or nonceremonial marriages.
- 367. — Foreign marriages.
- 368. Admissibility of evidence.
- 369. — In general.
- 370. — Testimony of parties.
- 371. — Witnesses and others present at marriage.
- 372. — Certificates.
- 373. — Records and other entries.
- 374. — Admissions, declarations, and affidavits.
- 375. — Cohabitation, reputation, and holding out.
- 376. — Foreign marriages.
- 377. Degree of proof.
- 378. — In general.
- 379. — Informal or nonceremonial marriages.
- 380. — Foreign marriages.
- 381. Weight and sufficiency of evidence.
- 382. — In general.
- 383. — Testimony of parties or witnesses.
- 384. — Certificate.
- 385. — Admissions, declarations, and affidavits.
- 386. — Informal or nonceremonial marriages.
 - (1). In general.

**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.(Cont'd)**

- (2). Cohabitation, reputation, or holding out.
- 387. — Foreign marriages.

(H) QUESTIONS OF LAW OR FACT.

- 391. In general.
- 392. Informal or nonceremonial marriages.
- 393. Foreign marriages.

(I) INSTRUCTIONS.

- 395. In general.
- 396. Informal or nonceremonial marriages.
- 397. Foreign marriages.

**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.****(A) IN GENERAL.**

- 401. In general.
- 402. Fiduciary or confidential relationship.
- 403. Domicile and cohabitation.
- 404. Restraint, discipline, and punishment.
- 405. Support of spouse and family.
Enforcement of support obligation, see VIII. Child support, see CHILD SUPPORT.
- 406. — In general.
- 407. — Commencement, duration, and termination of duty.
- 408. — Parties' needs, means, and abilities to provide.
- 409. Services of spouse.
Earnings of spouse, see §434.
- 410. Disabilities and privileges of coverture.
- 411. — In general.
- 412. — Trade or business.
- 413. Evidence.
- 414. Questions of law or fact.

(B) PROPERTY IN GENERAL.*Community property, see V.***1. IN GENERAL.**

- 421. In general.
- 422. Right or capacity to take and hold property.
- 423. Transfers of property to spouses in general.
- 424. Nature and extent of spouses' ownership interests in general.
- 425. — In general.

253. MARRIAGE AND COHABITATION**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 426. — Separate or joint ownership in general.
- 427. — Vested or inchoate interests in general.
- 428. Particular property or circumstances of acquisition.
- 429. — In general.
- 430. — Real property in general.
- 431. — Personal property in general.
- 432. — Appurtenances and improvements.
- 433. — Money, profits, and proceeds in general.
- 434. — Earnings and distributions.
- 435. — Insurance and benefits.
- 436. — Gifts, trusts, and inheritance.
- 437. — Accounts and deposits.
- 438. — Rights of action, judgments, and damages.
- 439. — Property acquired before marriage.
- 440. Estoppel to claim separate property or estate.
- 441. Evidence.
- 442. — In general; admissibility.
- 443. — Presumptions, inferences, and burden of proof.
- 444. — Degree of proof.
- 445. — Weight and sufficiency.
- 446. Questions of law or fact.

2. JOINT TENANCY.

- 451. In general; nature and incidents.
- 452. Creation and existence in general.
- 453. Particular property or circumstances of acquisition.
- 454. Survivorship.
- 455. Severance and termination.
- 456. Evidence.
- 457. Questions of law or fact.

3. TENANCY IN COMMON.

- 461. In general; nature and incidents.
- 462. Creation and existence in general.
- 463. Particular property or circumstances of acquisition.
- 464. Survivorship.
- 465. Tenancy in common and joint tenancy distinguished.
- 466. Severance and termination.

**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 467. Evidence.
- 468. Questions of law or fact.

4. TENANCY BY ENTIRETY.

- 471. In general; nature and incidents.
- 472. Creation and existence in general.
- 473. Particular property or circumstances of acquisition.
- 474. — In general.
- 475. — Real property in general.
- 476. — Personal property in general.
- 477. — Appurtenances and improvements.
- 478. — Money, profits, and proceeds in general.
- 479. — Earnings and distributions.
- 480. — Insurance and benefits.
- 481. — Gifts, trusts, and inheritance.
- 482. — Accounts and deposits.
- 483. — Rights of action, judgments, and damages.
- 484. — Property acquired before marriage.
- 485. Survivorship.
- 486. Tenancy by entirety and joint tenancy distinguished.
- 487. Tenancy by entirety and tenancy in common distinguished.
- 488. Severance and termination.
- 489. Evidence.
- 490. — In general; admissibility.
- 491. — Presumptions, inferences, and burden of proof.
- 492. — Degree of proof.
- 493. — Weight and sufficiency.
- 494. Questions of law or fact.

**5. RIGHTS, DUTIES, AND LIABILITIES
OF SPOUSES AS TO PROPERTY.**

Property transactions by spouses, see IV(F). Property transactions between spouses, see IV(H).

- 501. In general.
- 502. Consent in general.
- 503. Management and use of property.
- 504. Adverse possession.
- 505. Separate property or estate.
- 506. Evidence.
- 507. Questions of law or fact.

(C) CONTRACTS IN GENERAL.

- 511. In general.

253. MARRIAGE AND COHABITATION**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 512. Right or capacity to contract.
- 513. Requisites and validity of contracts in general.
- 514. Particular contracts.
- 515. — In general.
Contracts for sale or other disposition of property, see IV(F). Contracts between spouses, see IV(H).
- 516. — Contracts made individually.
- 517. — Contracts made jointly.
- 518. — Contracts for services.
- 519. — Contracts preceding marriage.
Agreements to marry, see II(B). Premarital contracts between spouses, see II(C).
- 520. — Releases.
- 521. Ratification and avoidance.
- 522. Separate property or estate, contracts concerning or enforceable against.
- 523. Evidence.
- 524. Questions of law or fact.

**(D) DEBTS, EXPENSES, AND RIGHTS
OF CREDITORS IN GENERAL.**

- 531. In general.
- 532. Right or capacity to incur debts and expenses.
- 533. Individual debts and expenses.
- 534. Joint debts and expenses.
- 535. Judgment debts; rights of judgment creditors.
- 536. — In general.
- 537. — Enforcement against entireties property.
- 538. Loans and advances.
- 539. Commercial paper and negotiable instruments.
- 540. — In general.
- 541. — Indorsement for transfer.
- 542. — Joinder and consent.
- 543. — Note for spouse's debt.
- 544. Guaranty or suretyship.
- 545. — In general.
- 546. — Guaranty in general.
- 547. — Surety for spouse.
- 548. — Surety for third person.
- 549. — Indorsement of note as surety.
- 550. — Accommodation note or acceptance.
- 551. Enforcement against separate property or estate.

**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 552. — In general.
- 553. — Effect of possession, use, or management by nonowning spouse.
- 554. — Improvements and materials furnished.
- 555. — Judgment debts; right of judgment creditors.
- 556. — Loans and advances.
- 557. — Commercial paper and negotiable instruments.
- 558. — Guaranty and suretyship.
 - (1). In general.
 - (2). Debts of nonowning spouse.
- 559. — Debts incurred in separate business.
- 560. — Debts contracted on credit of separate estate.
- 561. — Debts expressly charged on separate estate.
 - (1). In general.
 - (2). Debts of nonowning spouse.
- 562. Premarital debts and expenses.
- 563. Evidence.
- 564. Questions of law or fact.

(E) NECESSARIES AND FAMILY EXPENSES.

- 571. In general.
- 572. Right or capacity to procure necessities.
- 573. Joint, primary, and secondary liability.
- 574. Viability of marriage.
- 575. — In general.
- 576. — Effect of separation.
 - (1). In general.
 - (2). Separation for fault.
 - (3). Separation by agreement.
- 577. — Effect of pendency of divorce.
- 578. Effect of charging or extending credit to procuring spouse alone.
- 579. Effect of agreement by nonprocuring spouse to pay.
- 580. Notice not to sell to procuring spouse on credit.
- 581. Particular expenses.
- 582. — In general.
- 583. — Medical services.
- 584. — Last sickness and funeral expenses.
- 585. — Costs of administration of estate of deceased spouse.

253. MARRIAGE AND COHABITATION**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 586. — Counsel fees.
- 587. Enforcement against separate property or estate.
- 588. Evidence.
- 589. Questions of law or fact.

(F) PROPERTY TRANSACTIONS BY SPOUSES.

Acquisition and ownership of property by spouses, and incidents thereof, see IV(B). Property transactions between spouses, see IV(H).

- 591. In general.
- 592. Right or capacity to engage in property transactions.
- 593. Requisites and validity in general.
- 594. — In general.
- 595. — Joinder and consent in general.
- 596. — Deeds in general.
- 597. Accounts and deposits in general.
- 598. Purchases, sales, and conveyances.
- 599. Leases.
- 600. Encumbrances and liens.
- 601. Mortgages and deeds of trust.
- 602. — In general.
- 603. — Purchase money transactions.
- 604. Secured transactions, chattel mortgages, and pledges.
- 605. Easements.
- 606. Gifts and trusts.
- 607. Transactions involving separate property or estate.
- 608. — In general.
- 609. — Mortgages, deeds of trust, and pledges.
- 610. Transactions preceding marriage.
- 611. Transactions in fraud of spouse.
See also FRAUDULENT CONVEYANCES ⇨103.
- 612. Other particular transactions.
- 613. Ratification and avoidance.
- 614. Evidence.
- 615. Questions of law or fact.

(G) AGENCY.

- 621. In general.
- 622. Right or capacity to appoint or act as agent.
- 623. Agency between spouses.
- 624. — In general.
- 625. — Apparent authority in general.
- 626. — Particular cases and contexts.

**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- (1). In general.
- (2). Contracts in general.
- (3). Debts and expenses.
- (4). Property transactions.
- (5). Separate property or estate.
- 627. — Ratification or repudiation of agency.
- 628. Evidence.
- 629. — In general; admissibility.
- 630. — Presumptions, inferences, and burden of proof.
- 631. — Degree of proof.
- 632. — Weight and sufficiency.
- 633. Questions of law or fact.

(H) TRANSACTIONS BETWEEN SPOUSES.

- 641. In general.
- 642. Contracts and agreements in general.
- 643. — In general.
- 644. — Right or capacity to make contract or agreement with spouse.
- 645. — Requisites and validity.
- 646. — Construction, operation, performance, and breach.
- 647. Contracts and debts existing at time of marriage.
- 648. Services.
- 649. Partnership or other joint enterprise.
- 650. Loans and advances.
- 651. Commercial paper and negotiable instruments.
- 652. Transactions in personal property.
- 653. Transmutation of character of property.
- 654. Conveyances.
- 655. — In general.
- 656. — Validity in general.
- 657. — Third person as intermediary.
- 658. — Consideration.
- 659. — Rights and interests acquired.
- 660. — Mortgage or security.
- 661. Gifts.
- 662. — In general.
- 663. — Power to make or receive.
- 664. — Third person as intermediary.
- 665. — What constitutes.
 - (1). In general.
 - (2). Accounts and deposits.

253. MARRIAGE AND COHABITATION**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 666. — Validity.
- 667. — Operation and effect.
- 668. Agreements concerning terms of marital relationship.
- 669. — In general.
- 670. — Reconciliation agreements.
- 671. Compromise, settlement, and release.
- 672. Modification, rescission, or avoidance.
- 673. Property settlements.
Prenuptial settlements and other premarital agreements, see II(C).
- 674. — In general.
- 675. — Requisites and formation.
- 676. — Validity and enforceability.
- 677. — Construction, operation, performance, and breach.
 - (1). In general.
 - (2). Particular cases and contexts.
- 678. — Modification, rescission, or avoidance.
- 679. Evidence.
- 680. — In general; admissibility.
- 681. — Presumptions, inferences, and burden of proof.
 - (1). In general.
 - (2). Gifts.
 - (3). Property settlements.
- 682. — Degree of proof.
- 683. — Weight and sufficiency.
 - (1). In general.
 - (2). Gifts.
 - (3). Property settlements.
- 684. Questions of law or fact.

(I) RIGHTS OF ACTION AND DEFENSES.

- 691. In general.
- 692. Capacity to sue and be sued in general.
- 693. Rights of action by spouses.
- 694. — In general.
- 695. — Actions on contracts.
- 696. — Actions concerning separate property.
- 697. — Other particular actions.
Tort actions, see VI.
- 698. — Defenses against spouses.
- 699. Rights of action against spouses.
- 700. — In general.
- 701. — Actions on contracts.

**IV. MARITAL RIGHTS, DUTIES, AND
LIABILITIES IN GENERAL.(Cont'd)**

- 702. — Actions concerning separate property.
- 703. — Other particular actions.
Tort actions, see VI.
- 704. — Defenses by spouses.
- 705. Rights of action between spouses.
- 706. — In general.
- 707. — Interspousal immunity in general.
- 708. — Actions on contracts.
- 709. — Actions concerning separate property.
- 710. — Other particular actions.
Tort actions, see VI.

(J) PROCEEDINGS.

- 721. In general.
- 722. Jurisdiction and venue.
- 723. Time to sue; limitations and laches.
- 724. Parties.
- 725. — In general.
- 726. — Joinder and intervention in actions against spouses.
- 727. Abatement and revival.
- 728. Process.
- 729. Pleading.
- 730. — In general.
- 731. — Actions by spouses.
- 732. — Actions against spouses.
- 733. — Actions between spouses.
- 734. — Answer or other responsive pleading.
- 735. — Variance between pleadings and proof.
- 736. Trial or hearing.
- 737. — In general.
- 738. — Instructions.
- 739. — Verdict and findings.
- 740. Judgment.
- 741. — In general.
- 742. — Against spouses jointly or individually.
- 743. — Against separate property.
- 744. Costs and fees.

V. COMMUNITY PROPERTY.**(A) IN GENERAL.**

- 751. In general.
- 752. Nature of marital community.

253. MARRIAGE AND COHABITATION**V. COMMUNITY PROPERTY.(Cont'd)**

- 753. Creation, existence, and validity of marital community.
- 754. Duration and termination of marital community.
- 755. — In general.
- 756. — Abandonment, separation, or divorce.
- 757. — Death.
- 758. — Physical or mental incapacity.
- 759. — Election or other act of parties.
- 760. Evidence.
- 761. Questions of law or fact.

(B) PROPERTY SUBJECT TO COMMUNITY; CHARACTERIZATION.**1. IN GENERAL.**

- 771. In general.
- 772. Property acquired or held during marriage in general.
- 773. Time when character determined; continuance of character.
- 774. Division and valuation of property or interests.
- 775. — In general.
- 776. — Discretion of court in general.
- 777. — Factors considered; methodologies used.
- 778. — Time of assessment or measure.
- 779. — Credits, offsets, and deductions.
- 780. — Payment.

2. PARTICULAR PROPERTY.

- 791. In general.
- 792. Real property in general.
- 793. Personal property in general.
- 794. Appurtenances and improvements.
- 795. Licenses, education, and degrees.
- 796. Businesses and associated assets in general.
- 797. Stocks, bonds, and other investments.
- 798. Good will.
- 799. Money, profits, and proceeds in general.
- 800. Interests under leases; rents.
- 801. Earnings and distributions.
- 802. Tax refunds and overpayments.
- 803. Insurance and benefits.
- 804. — In general.
- 805. — Life insurance.

V. COMMUNITY PROPERTY.(Cont'd)

- 806. — Pensions, retirement benefits, and annuities.
- 807. — Stock options.
- 808. — Disability benefits and workers' compensation.
- 809. Accounts and deposits.
- 810. Rights of action, judgments, and damages.

3. PARTICULAR CIRCUMSTANCES OF ACQUISITION OR POSSESSION.

- 821. In general.
- 822. Purchases.
- 823. — In general.
- 824. — Property acquired on credit.
- 825. — Use of separate property as consideration or security for purchase.
- 826. — Necessity and effect of recitals in conveyances.
- 827. Gifts, trusts, and inheritance.
- 828. Public lands acquired by grant or entry.
- 829. Property acquired before marriage.
- 830. Property acquired after termination of community.
- 831. Names in which property is acquired or held.
- 832. Change in form or character of property; commingling.
- 833. — In general.
- 834. — Particular cases.
- 835. Property derived from separate property.
- 836. — In general.
- 837. — Improvements or additions to separate property.
- 838. — Rents, profits, and products of separate property.
- 839. — Appreciation of separate property.
- 840. — Proceeds of separate property.
- 841. Waiver and estoppel as to character of property.
- 842. Waiver and estoppel as to division and valuation of property or interests.

4. EVIDENCE.

- 851. In general; admissibility.
- 852. Presumptions and inferences.
- 853. — In general.
- 854. — Property acquired or held during marriage in general.

253. MARRIAGE AND COHABITATION**V. COMMUNITY PROPERTY.**(Cont'd)

- 855. — Division and valuation of property or interests in general.
- 856. — Particular property in general.
- 857. — Particular circumstances of acquisition or possession in general.
- 858. — Purchases.
- 859. — Gifts, trusts, and inheritance.
- 860. — Property acquired before marriage.
- 861. — Property acquired after termination of community.
- 862. — Names in which property is acquired or held.
- 863. — Change in form or character of property; commingling.
- 864. — Property derived from separate property.
- 865. Burden of proof.
- 866. Degree of proof.
- 867. Weight and sufficiency.
- 868. — In general.
- 869. — Property acquired or held during marriage in general.
- 870. — Division and valuation of property or interests in general.
- 871. — Particular property in general.
- 872. — Particular circumstances of acquisition or possession in general.
- 873. — Purchases.
- 874. — Gifts, trusts, and inheritance.
- 875. — Property acquired before marriage.
- 876. — Property acquired after termination of community.
- 877. — Names in which property is acquired or held.
- 878. — Change in form or character of property; commingling.
- 879. — Property derived from separate property.

5. QUESTIONS OF LAW OR FACT.

- 881. In general.
- 882. Division and valuation of property or interests.

(C) RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY.

Property transactions by spouses, see V(E). Property transactions between spouses, see V(F).

- 891. In general.
- 892. Management and use of property.

V. COMMUNITY PROPERTY.(Cont'd)

- 893. Adverse possession.
- 894. Separate property or estate.
- 895. Fiduciary duties.
- 896. Rights, duties, and liabilities after termination of community.
- 897. Evidence.
- 898. Questions of law or fact.

(D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS.

Tort liability, see VI.

- 901. In general.
- 902. Individual debts and expenses.
- 903. Necessaries and family expenses.
- 904. Taxes and assessments.
- 905. Insurance.
- 906. Loans and advances.
- 907. Commercial paper and negotiable instruments.
- 908. Guaranty or suretyship.
- 909. Debts and expenses concerning separate property or estate.
- 910. Premarital debts and expenses.
- 911. Debts and expenses incurred after termination of community.
- 912. Evidence.
- 913. — In general; admissibility.
- 914. — Presumptions, inferences, and burden of proof.
- 915. — Degree of proof.
- 916. — Weight and sufficiency.
- 917. Questions of law or fact.

(E) PROPERTY TRANSACTIONS BY SPOUSES.

Acquisition and ownership of property by spouses, and incidents thereof, see V(B), V(C). Property transactions between spouses, see V(F).

- 921. In general.
- 922. Sales and conveyances.
- 923. Leases.
- 924. Encumbrances and liens.
- 925. Mortgages and deeds of trust.
- 926. — In general.
- 927. — Purchase money transactions.
- 928. Secured transactions, chattel mortgages, and pledges.
- 929. Easements.
- 930. Gifts and trusts.
- 931. Transactions involving separate property or estate.

253. MARRIAGE AND COHABITATION**V. COMMUNITY PROPERTY.**(Cont'd)

- 932. Transactions preceding marriage.
- 933. Transactions after termination of community.
- 934. Transactions in fraud of spouse.
See also FRAUDULENT CONVEYANCES ⇨103.
- 935. Other particular transactions.
- 936. Estoppel to assert invalidity.
- 937. Evidence.
- 938. — In general; admissibility.
- 939. — Presumptions, inferences, and burden of proof.
- 940. — Degree of proof.
- 941. — Weight and sufficiency.
- 942. Questions of law or fact.

(F) TRANSACTIONS BETWEEN SPOUSES.

- 951. In general.
- 952. Contracts and agreements in general.
- 953. — In general.
- 954. — Requisites and validity.
- 955. — Construction, operation, performance, and breach.
- 956. Transmutation of character of property.
- 957. — In general.
- 958. — Transmutation into community property.
- 959. — Transmutation into separate property.
- 960. Gifts.
- 961. — In general.
- 962. — Transmutation by gift.
- 963. Agreements modifying or terminating marital community.
- 964. Agreements as to division and valuation of property or interests.
- 965. Compromise, settlement, and release.
- 966. Evidence.
- 967. — In general; admissibility.
- 968. — Presumptions, inferences, and burden of proof.
- 969. — Degree of proof.
- 970. — Weight and sufficiency.
- 971. Questions of law or fact.

(G) REIMBURSEMENT RIGHTS BETWEEN SPOUSES.

- 981. In general.
- 982. For contributions to community property.

V. COMMUNITY PROPERTY.(Cont'd)

- 983. — In general.
- 984. — After termination of community.
- 985. For diminution of community property.
- 986. For contributions to or diminution of separate property.
- 987. For payment of debts and expenses.
- 988. Evidence.
- 989. — In general; admissibility.
- 990. — Presumptions, inferences, and burden of proof.
- 991. — Degree of proof.
- 992. — Weight and sufficiency.
- 993. Questions of law or fact.

(H) RIGHTS OF ACTION AND DEFENSES.*Tort actions, see VI.*

- 1001. In general.
- 1002. Rights of action by spouses.
- 1003. Rights of action against spouses.
- 1004. Rights of action between spouses.
- 1005. — In general.
- 1006. — Actions for dissolution or partition.

(I) PROCEEDINGS.

- 1011. In general.
- 1012. Jurisdiction and venue.
- 1013. Time to sue; limitations and laches.
- 1014. Parties.
- 1015. Process and appearance.
- 1016. Pleading.
- 1017. Trial or hearing.
- 1018. Judgment or decree.
- 1019. — In general.
- 1020. — Execution and enforcement.
- 1021. Accounting.
- 1022. Review.
- 1023. — In general.
- 1024. — Decisions reviewable.
- 1025. — Presentation and reservation in lower court of grounds of review.
- 1026. — Scope, extent, and standard of review.
- 1027. — Presumptions on review.
- 1028. — Harmless and reversible error.
- 1029. — Determination and disposition.
- 1030. Costs and fees.

253. MARRIAGE AND COHABITATION**(J) DESCENT AND DISTRIBUTION.**

- 1041. In general.
- 1042. Rights and liabilities of survivor.
- 1043. — In general.
- 1044. — Possession or use of community property.
- 1045. — Acceptance or renunciation of community.
- 1046. — Debts and charges against community.
- 1047. — Debts incurred after death of spouse.
- 1048. — Rights of creditors of survivor.
- 1049. — Sales and conveyances.
 - (1). In general.
 - (2). For payment of community debts.
 - (3). Rights and liabilities of purchasers.
- 1050. — Mortgage or pledge of community property.
- 1051. — Proceedings.
- 1052. Rights and liabilities of heirs.
Persons adopted, see ADOPTION. Nonmarital children, see DESCENT AND DISTRIBUTION II(C).
- 1053. — In general.
- 1054. — Acceptance or renunciation of rights.
- 1055. — Community debts and charges.
- 1056. — Proceedings.
- 1057. Subsequent marriage of survivor.
- 1058. Administration.
- 1059. — In general.
- 1060. — Qualifying as survivor.
- 1061. — What are community assets.
- 1062. — Control, management, and collection.
- 1063. — Allowance of claims.
- 1064. — Sale or lease of community property.
- 1065. — Accounting and settlement.
- 1066. — Distribution of property.
- 1067. — Proceedings.

VI. TORTS.**(A) IN GENERAL.**

- 1071. In general.
- 1072. Torts against spouses.
- 1073. — In general.
- 1074. — Persons entitled to sue or recover.

VI. TORTS.(Cont'd)

- 1075. — Derivative claims in general.
- 1076. — Loss of spouse's services, society, or consortium.
 - (1). In general.
 - (2). Nature of underlying claim or injury.
 - (3). Relation to and viability of underlying claim.
- 1077. — Medical and other expenses.
- 1078. Torts by spouses.
- 1079. — In general.
- 1080. — Torts committed before marriage.
- 1081. — Liability of one spouse for other spouse's conduct.
- 1082. — Liability of marital community.
- 1083. Torts between spouses.
- 1084. — In general.
- 1085. — Particular cases and contexts.
- 1086. — Rights of action; interspousal immunity.
 - (1). In general.
 - (2). Particular cases and contexts.
- 1087. Proceedings on tort claims.
- 1088. — In general.
- 1089. — Jurisdiction and venue.
- 1090. — Time to sue; limitations and laches.
- 1091. — Parties.
 - (1). In general.
 - (2). Joinder and intervention in actions against spouses.
- 1092. — Abatement and revival.
- 1093. — Process.
- 1094. — Pleading.
 - (1). In general.
 - (2). Actions by spouses.
 - (3). Actions against spouses.
 - (4). Actions between spouses.
 - (5). Answer or other responsive pleading.
 - (6). Variance between pleadings and proof.
- 1095. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.

253. MARRIAGE AND COHABITATION**VI. TORTS.(Cont'd)**

1096. — Trial.
 (1). In general.
 (2). Questions of law or fact.
 (3). Instructions.
 (4). Verdict and findings.
1097. — Judgment.
 (1). In general.
 (2). Against spouses jointly or individually.
 (3). Against separate property.
1098. — Costs and fees.

(B) ALIENATION OF AFFECTIONS.

1101. In general.
 1102. Right of action; effect of statute.
 1103. Defenses.
 1104. Persons liable.
 1105. Time to sue; limitations and laches.
 1106. Parties.
 1107. Pleading.
 1108. Evidence.
 1109. — In general.
 1110. — Presumptions, inferences, and burden of proof.
 1111. — Admissibility.
 (1). In general.
 (2). Declarations or admissions of spouse.
 (3). Declarations or admissions of third persons.
 (4). Acts or conduct of spouse.
 (5). Acts or conduct of third persons.
 (6). Financial condition or earning capacity.
 (7). Mitigation of damages.
1112. — Weight and sufficiency.
 1113. Damages.
 1114. — In general.
 1115. — Punitive or exemplary damages.
 1116. Trial and judgment.

(C) ADULTEROUS CONDUCT; CRIMINAL CONVERSATION.

Offense of adultery, see VII(B).

1121. In general.
 1122. Right of action; effect of statute.
 1123. Defenses.
 1124. Pleading.
 1125. Evidence.

VI. TORTS.(Cont'd)

1126. Damages.
 1127. — In general.
 1128. — Punitive or exemplary damages.
 1129. Trial and judgment.

VII. OFFENSES.**(A) IN GENERAL.**

1131. In general.
 1132. Performing or participating in illegal marriage.
 1133. Offenses between spouses in general.
 1134. Spousal liability for offenses committed by other spouse.

(B) ADULTERY.

Civil liability for adultery, including tort of criminal conversation, see VI(C).

1141. In general; nature and elements.
 1142. Defenses.
 1143. Persons entitled to prosecute.
 1144. Indictment, information, presentment, or complaint.
 1145. Evidence.
 1146. — In general.
 1147. — Presumptions, inferences, and burden of proof.
 1148. — Admissibility in general.
 1149. — Marriage.
 1150. — Intimacy and intercourse.
 1151. — Weight and sufficiency.
 1152. Trial.
 1153. Sentence and punishment.

(C) COHABITATION.

Civil unions, domestic partnerships, and similar alternatives to marriage, see IX.

1161. In general; nature and elements.
 1162. Defenses.
 1163. Indictment, information, presentment, or complaint.
 1164. Evidence.
 1165. Trial.
 1166. Sentence and punishment.

(D) BIGAMY AND POLYGAMY.

Validity of bigamous or polygamous marriage, see ¶230, 270. Annulment of bigamous or polygamous marriage, see ¶318.

1171. In general; nature and elements.
 1172. Bigamous cohabitation in general.

253. MARRIAGE AND COHABITATION**VII. OFFENSES.(Cont'd)**

- 1173. Defenses.
- 1174. Indictment, information, presentment, or complaint.
- 1175. Evidence.
- 1176. — In general.
- 1177. — Presumptions, inferences, and burden of proof.
- 1178. — Admissibility in general.
- 1179. — Previous marriage.
- 1180. — Illegal marriage or cohabitation.
- 1181. — Weight and sufficiency.
- 1182. Trial.
- 1183. Sentence and punishment.

VIII. ENFORCEMENT OF SUPPORT OBLIGATION.

Duty to support, see §405. Enforcement in divorce proceedings, see DIVORCE V. Enforcement of child support obligation, see CHILD SUPPORT. Recoupment of public assistance benefits, see also PUBLIC ASSISTANCE.

- 1201. In general.
- 1202. Offenses in general.
- 1203. Separate maintenance, support orders, and alimony in general.
- 1204. — In general.
- 1205. — Relation to divorce and judicial separation.
- 1206. — Persons entitled to sue or seek award.
- 1207. Abandonment or desertion.
- 1208. Cruelty, mistreatment, or insobriety.
- 1209. Constructive abandonment.
- 1210. Conduct of requesting spouse; relative fault.
- 1211. Consent and condonation.
- 1212. Resumption of cohabitation; reconciliation.
- 1213. Parties' needs, means, and abilities to pay.
- 1214. Amount and incidents of award.
- 1215. — In general.
- 1216. — Particular awards.
- 1217. — Periodic payments or lump sum.
- 1218. — Bond or other security.
- 1219. — Receivers.
- 1220. — Disposition of property.
- 1221. Proceedings.
- 1222. — In general.
- 1223. — Nature and form of proceedings.

VIII. ENFORCEMENT OF SUPPORT OBLIGATION.(Cont'd)

- 1224. — Conditions precedent.
- 1225. — Jurisdiction and venue.
- 1226. — Time for proceedings; limitations and laches.
- 1227. — Parties.
- 1228. — Process.
- 1229. — Pleading.
- 1230. — Indictment or information.
- 1231. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.
- 1232. — Trial or hearing.
- 1233. — Judgment or order.
 - (1). In general.
 - (2). Construction, operation, and effect; conclusiveness.
- 1234. Amendment or modification of award.
- 1235. Duration and termination of award.
- 1236. Enforcement of award.
- 1237. — In general.
- 1238. — Lien and priority.
- 1239. — Contempt.
- 1240. Interjurisdictional enforcement issues.
- 1241. Sentence and punishment.
- 1242. Costs and fees in general.
- 1243. Temporary support and counsel fees; award pending proceedings.
- 1244. — In general.
- 1245. — Amount and incidents of award.
- 1246. Review of proceedings.
- 1247. — In general.
- 1248. — Decisions reviewable.
- 1249. — Presentation and reservation in lower court of grounds of review.
- 1250. — Scope, extent, and standard of review.
 - (1). In general.
 - (2). Discretion of lower court.
 - (3). Questions of fact, verdicts, and findings.
- 1251. — Presumptions on review.
- 1252. — Harmless and reversible error.
- 1253. — Determination and disposition.

257. MECHANICS' LIENS**IX. MARRIAGE ALTERNATIVES.**

*Right to marry or cohabit in general, see ¶102.
 Informal or nonceremonial marriage, see ¶211. Of-
 fenses, see VII.*

- 1261. In general.
- 1262. Same-sex relationships in general.
- 1263. Rights, duties, and liabilities of parties to relationship.
- 1264. — In general.
- 1265. — Property in general.
- 1266. — Torts.
- 1267. Contracts and contractual relationships.
- 1268. — In general.
- 1269. — Same-sex relationships.
- 1270. Duration and termination of relationship.
- 1271. — In general.
- 1272. — Support, allowances, and disposition of property; palimony.
 - (1). In general.
 - (2). Agreements and promises.
- 1273. Actions and proceedings.
- 1274. — In general.
- 1275. — Pleading.
- 1276. — Evidence.
- 1277. — Review.
- 1278. — Costs and fees.

257. MECHANICS' LIENS**SUBJECTS INCLUDED**

Statutory liens on specific real property as security for the price or value of work performed or materials furnished for the erection, improvement, or repair of buildings or other structures on the property

Nature and grounds of such liens

What property may be subjected to such liens

By whom and for what purposes property may be subjected thereto

Who may be entitled to the benefit of such liens

Proceedings to acquire and perfect such liens

Waiver, discharge, or extinguishment thereof

Bonds, etc., to secure against such liens

Priorities of such liens

Enforcement of mechanics' liens

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Liens in general, and particularly liens on personal property, see LIENS

Vessels, liens for construction or repairs, see MARITIME LIENS

Wages in general, liens for, see LABOR AND EMPLOYMENT

Work or materials other than for building, liens on real property for, see PROPERTY V, MINES AND MINERALS, RAILROADS

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL, ¶1–21.

II. RIGHT TO LIEN, ¶22–115.

(A) NATURE OF IMPROVEMENT, ¶22–34.

(B) SERVICES RENDERED AND MATERIALS FURNISHED, ¶35–54.

(C) AGREEMENT OR CONSENT OF OWNER, ¶55–78.

(D) PERSONS ENTITLED IN GENERAL, ¶79–93.

(E) SUBCONTRACTORS, AND CONTRACTORS' WORKERS AND MATERIALMEN, ¶94–115.

III. PROCEEDINGS TO PERFECT, ¶116–160.

IV. OPERATION AND EFFECT, ¶161–201.

(A) AMOUNT AND EXTENT OF LIEN, ¶161–179.

(B) PROPERTY, ESTATES, AND RIGHTS AFFECTED, ¶180–193.

(C) PRIORITY, ¶194–201.

V. ASSIGNMENT OF LIEN OR CLAIM, ¶202–206.

VI. WAIVER OF RIGHT TO LIEN, ¶207–217.

VII. BOND OR DEPOSIT TO PREVENT OR DISCHARGE LIEN, ¶218–229.

VIII. EXTINGUISHMENT, ¶230–235.

IX. RELEASE, ¶236.

X. PAYMENT OR SATISFACTION, ¶237–244.

XI. ENFORCEMENT, ¶245–311.

XII. INDEMNITY AGAINST LIENS, ¶312–317.

257. MECHANICS' LIENS**I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.**

1. Nature of lien in general.
2. What law governs.
3. Constitutional and statutory provisions.
5. Construction of lien laws in general.
6. Retroactive operation of lien laws.
7. Effect of change or repeal of lien laws.
8. Persons who may obtain lien.
9. Property which may be subject to lien.
10. — In general.
12. — Corporate property.
13. — Public buildings and other property.
14. — Homestead and other exemptions.
15. Estates or interest which may be subject to lien.
16. — In general.
17. — Particular legal estates in land.
18. — Equitable estates and interests in general.
19. — Mortgaged or incumbered property.
20. — Leaseholds.
21. — Trust estates.

II. RIGHT TO LIEN.**(A) NATURE OF IMPROVEMENT.**

22. Nature of property improved.
23. Annexation or benefit to real property.
24. Nature of building or other structure.
25. Erection or construction.
26. Improvement, alteration, or repair of building.
27. Removal of building.
28. Excavations and foundations.
29. Particular portions of building or structure.
30. Fixtures in general.
31. Apparatus for heating, cooking, water supply, or lighting.
32. Machinery.
33. Improvements outside building.
 - (1). In general.
 - (2). Digging wells.
 - (3). Grading and cultivating.
34. Improvements of streets or sidewalks.

(B) SERVICES RENDERED AND MATERIALS FURNISHED.

35. Nature of services in general.

II. RIGHT TO LIEN.(Cont'd)

36. Architects, and preparation of plans and specifications.
38. Superintendence.
39. Services of workers in general.
40. Preparatory work.
42. Work other than construction.
43. Work not done on premises.
44. Board or lodging of workers.
45. Nature of materials in general.
47. Materials used, but not incorporated in work.
48. Materials prepared or furnished, but not used.
49. Defective materials.
50. Transportation.
51. Advances of money.
52. Services or materials for particular building or work.
53. Reliance on credit of building or property.
54. Requisite amount or value.

(C) AGREEMENT OR CONSENT OF OWNER.

55. Element of lien in general.
 - (1). In general.
 - (2). Extra work.
 - (3). Consequential damages.
56. Ownership or possession of land.
57. — In general.
 - (1). In general.
 - (2). Part of joint owners.
 - (3). Persons holding title in trust for equitable owner.
 - (4). Acquirement of title after making of contract.
 - (5). Occupants or persons in possession or control of land.
 - (6). Vendor under executory contract.
58. — Lessee or other tenant.
59. — Purchaser under executory contract.
60. Necessity for contract or consent by owner.
61. — In general.
62. — Improvements on homestead.
63. — Improvements by lessee.
64. — Improvements by purchaser.
65. Capacity to contract or consent.
66. — In general.

257. MECHANICS' LIENS**II. RIGHT TO LIEN.(Cont'd)**

- 67. — Infants.
- 68. — Married women.
- 69. Authority to contract or consent.
- 70. — In general.
- 71. — Husband or wife.
- 72. — Agent or other representative.
- 73. Form and requisites of contract or consent.
 - (.5). In general.
 - (1). Contract or consent in general.
 - (2). Contracts and consents relative to homesteads and married women's property.
 - (3). Necessity of writing.
 - (4). Description of property, work, or material.
 - (5). Stipulations as to time of performance and payment.
 - (6). Signature and acknowledgment.
 - (7). Consent to improvements by lessee.
 - (8). Contracts including nonlienable elements.
 - (9). Legality of lienor's object in making contract with owner.
- 74. Filing or recording contract, consent, or notice.
- 75. Implied contract or consent.
 - (1). In general.
 - (2). Improvements by lessees, and vendors or purchasers under executory contracts.
 - (3). Improvements on married women's separate property.
 - (4). What constitutes knowledge.
- 76. Estoppel.
- 77. Ratification.
- 78. Notice or protest by owner to prevent lien.

(D) PERSONS ENTITLED IN GENERAL.

- 79. Workers in general.
- 80. Mechanics and artisans.
- 81. Laborers and other unskilled workers.
- 82. Materialmen.
- 83. — In general.
- 84. — Effect of contract with owner.
- 85. Contractors.
- 86. — In general.

II. RIGHT TO LIEN.(Cont'd)

- 87. — Contracts for part of work.
- 88. — Services of workers.
- 89. — Materials.
- 90. — Stipulations of contracts as to lien.
- 91. — Modification of contract.
- 92. — Rescission or abandonment of contract.
- 93. — Performance of contract.

(E) SUBCONTRACTORS, AND CONTRACTORS' WORKERS AND MATERIALMEN.

- 94. Grounds and requisites of lien in general.
- 95. Direct lien independent of lien of principal contractor.
- 96. Agency of principal contractor for owner.
- 97. Substitution in place of and subordination to rights of principal contractor.
- 98. Requisites of subcontracts in general.
- 99. Notice to owners.
 - 99.1. Contract or consent of owner.
- 100. Effect of filing of principal contract by owner.
- 101. Effect of stipulations in principal contract.
- 102. — In general.
- 103. — As to liens.
- 104. — As to payment.
- 105. Rights of subcontractors in general.
- 106. Subcontractors of subcontractor.
- 107. Employees of contractors or subcontractors.
- 108. Persons furnishing materials to contractors or subcontractors.
- 109. Persons furnishing materials to materialmen.
- 110. Modification or rescission of principal contract.
- 111. Default in performance of principal contract.
 - (1). In general.
 - (2). Abandonment after receipt of payment for all work.
 - (3). Stipulations of original contract as to default.
- 112. Performance of subcontract.
- 113. Lien or rights as to money due principal contractor.
 - (1). In general.
 - (2). Notice to owner.

257. MECHANICS' LIENS**II. RIGHT TO LIEN.(Cont'd)**

- 114. Assignment by principal contractor.
 - (.5). In general.
 - (1). Form, requisites, and validity of assignment.
 - (2). Operation and effect of assignment.
 - (3). Effect of transfer of contract to contractor's sureties.
- 115. Payment to principal contractor, or to subcontractor employing claimant.
 - (.5). In general.
 - (1). Payments to principal contractor in general.
 - (2). Advances and premature payments.
 - (3). Collusive payments.
 - (4). Notice to or knowledge of owner.
 - (5). Payments to subcontractor employing claimant.

III. PROCEEDINGS TO PERFECT.

- 116. Nature and form in general.
- 117. Notice to owner.
- 117.1. — In general.
- 118. — Necessity.
- 119. — Persons who may give notice.
- 120. — Persons to whom notice may be given.
- 121. — Time for notice.
- 122. — Form and requisites.
- 123. — Service.
- 124. — Defects and amendment.
- 125. — Operation and effect.
- 126. — Failure or delay in giving notice.
- 127. Filing contract.
- 128. Necessity for filing claim or statement.
- 129. Filing one or more claims in general.
- 130. Filing one or more claims against different buildings.
 - (1). In general.
 - (2). Buildings or improvements on different lots or parcels.
 - (3). Release of claim as to part of buildings.
- 131. Place for filing claim or statement.
- 132. Time for filing claim or statement.
 - (1). In general.
 - (2). Transfer or incumbrance of property.

III. PROCEEDINGS TO PERFECT.(Cont'd)

- (3). Maturity of claim or accrual of indebtedness.
- (4). Completion of contract in general.
- (5). Necessity for completion.
- (6). Delay in completion.
- (7). What amounts to completion.
- (8). Items operative to renew period.
- (9). Abandonment of work.
- (10). Successive deliveries and continuing contracts.
- (11). Deliveries under separate contracts.
- (12). Claims for extras and claimants without special contracts.
- (13). Contractors and materialmen under contract with owner.
- (14). Subcontractors and materialmen under contract not with owner.
- (15). Amendment of claim after limitations have run.
- 133. Form and contents of claim or statement.
- 134. — In general.
- 135. — Designation of parties.
- 136. — Description of property.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Sufficiency in general.
 - (3). Necessity of designating particular portion of entire tract.
 - (4). Error in name of subdivision.
 - (5). Description of building.
 - (6). Lien on improvement separate from land.
- 137. — Ownership or possession of property.
 - (.5). In general.
 - (1). Necessity of owner's name or estate in general.
 - (2). Sufficiency in general.
 - (3). Husband and wife.
 - (4). Property held under executory contracts of sale.
 - (5). Property of lessors and lessees.
 - (6). Transfer of property.
- 138. — Description of improvement.
- 139. — Description of services or materials.
 - (.5). In general.

257. MECHANICS' LIENS**III. PROCEEDINGS TO PERFECT.(Cont'd)**

- (1). Necessity in general.
- (2). Averments as to use or furnishing for use in building.
- (3). Sufficiency.
- 140. — Statement as to agreement or consent of owner.
- 141. — Designation of employer or contractor.
- 142. — Statement as to terms of contract.
- 143. — Setting out or annexing contract.
- 144. — Statement as to performance of contract.
- 145. — Statement as to extra work or materials.
- 146. — Statement as to time of rendering services or furnishing materials.
- 147. — Statement as to amount due or to become due.
- 148. — Statement as to credits and offsets.
- 149. — Itemized statement or account.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Where contract is for gross sum.
 - (3). Sufficiency in general.
 - (4). Apportionment between buildings or portions of work.
- 150. — Promissory note as evidence.
- 151. — Statement as to notice to owner.
- 152. — Statement as to time of filing.
- 153. Signature of claim or statement.
- 154. Verification of claim or statement.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency in general.
 - (3). Averments on knowledge or information and belief.
 - (4). Persons entitled to verify.
 - (5). Persons entitled to administer oath.
 - (6). Jurat.
- 155. Mode and sufficiency of filing or record of claim or statement.
- 156. Notice of filing or service of copy of claim or statement.
- 157. Effect of errors or defects in claim or statement.
 - (1). In general.
 - (2). Errors in dates.
 - (3). Excessive claims.

III. PROCEEDINGS TO PERFECT.(Cont'd)

- (4). Claims for items unfurnished or unused.
- (5). Inclusion of nonlienable items.
- (6). Omission of credits.
- (7). Waiver of defects.
- 158. Amendment of, or new, claim or statement.
- 159. Effect of filing claim or statement.
- 160. Cancellation or striking off of claim or lien.

IV. OPERATION AND EFFECT.**(A) AMOUNT AND EXTENT OF LIEN.**

- 161. Amount secured in general.
 - (1). In general.
 - (2). Part performance.
 - (3). Limitation to market or reasonable value of labor or materials.
 - (4). Interest and costs.
 - 162. Limitation to amount payable under contract.
 - 163. — In general.
 - 164. — Subcontractors, and contractors' workers and materialmen.
 - (1). In general.
 - (2). Validity of contract.
 - (3). Fraud between owner and contractor in inception of contract.
 - (4). Claims of contractor for extras.
 - 165. Time of accrual or commencement.
 - 166. — In general.
 - 167. — Making or filing of contract.
 - 168. — Beginning of work.
 - 169. — Interruption of work.
 - 170. — Delivery of materials.
 - 172. — Filing of claim or statement.
 - 173. — Relation back.
 - 174. Duration.
 - 175. — In general.
 - 176. — Effect of proceedings for enforcement.
 - 177. Continuance or revival.
 - 178. — In general.
 - 179. — Proceedings.
- (B) PROPERTY, ESTATES, AND RIGHTS AFFECTED.**
- 180. Nature of property affected.
 - 181. Extent of land affected.

257. MECHANICS' LIENS**IV. OPERATION AND EFFECT.(Cont'd)**

- 182. — In general.
- 183. — Separate lots or buildings.
- 184. Buildings.
- 185. Fixtures.
- 186. Appurtenances.
- 187. Estate, right, or interest affected in general.
- 188. Estate or interest of person creating or consenting to lien.
- 189. — In general.
- 190. — Equitable estate or interest.
- 191. — Leasehold.
- 192. Lien on reversion of landlord for improvements by tenant.
- 193. Lien on interest of vendor for improvements by purchaser.

(C) PRIORITY.

- 194. Mechanics' liens on same property.
- 195. — In general.
- 196. — Classification and order of preference.
- 197. Conveyances in general.
- 198. Liens and incumbrances in general.
- 199. Vendors' liens.
- 200. Judgments.
- 201. Attachments and executions.

V. ASSIGNMENT OF LIEN OR CLAIM.

- 202. Assignability in general.
- 203. Form and requisites of assignment.
 - (1). In general.
 - (2). Change in personnel of contracting firm.
- 204. Effect of assignment of debt or claim.
- 205. Operation and effect of assignment of lien.
- 206. Rights and liabilities of parties.

VI. WAIVER OF RIGHT TO LIEN.

- 207. Agreements not to claim lien.
- 208. Express waiver.
- 209. Implied waiver in general.
- 210. Extension of time for payment.
- 211. Taking or transfer of bill or note.
 - (1). In general.
 - (2). Intention of parties as to note being absolute payment.

VI. WAIVER OF RIGHT TO LIEN.(Cont'd)

- (3). Time of maturity of note.
- (4). Transfer of bill or note by payee.
- (5). Taking by subcontractor of note of contractor.
- 212. Taking collateral security.
 - (1). In general.
 - (2). Retention of title as security for purchase price.
 - (3). Note or indorsement of third person.
- 213. Taking mortgage on same property.
- 214. Recovery of judgment for debt.
- 215. Levy of attachment or execution.
- 216. Estoppel to claim lien.
 - (1). In general.
 - (2). As against mortgagees.
 - (3). Statements and conduct of subcontractors.
- 217. Persons entitled to assert waiver.

VII. BOND OR DEPOSIT TO PREVENT OR DISCHARGE LIEN.

- 218. Liens which may be prevented or discharged by giving security.
- 219. Substitution of security.
- 220. Persons entitled to give security.
- 220.1. — In general.
- 221. — Owners.
- 222. — Contractors.
- 223. Form and requisites of bond.
- 224. Sufficiency of bond.
- 225. Deposit as security.
- 226. Operation and effect of bond or deposit.
- 227. Liabilities on bonds.
- 228. Actions on bonds.
- 229. Liabilities of owner for failure to take bond for protection of subcontractors.

VIII. EXTINGUISHMENT.

- 230. Extinguishment or loss in general.
- 231. Destruction of building.
- 232. Removal of building.
- 233. Transfer of title in general.
- 234. Merger.
- 235. Delay in assertion or enforcement of lien.

257. MECHANICS' LIENS**IX. RELEASE.**

236. In general.

X. PAYMENT OR SATISFACTION.

237. Payment of debt.

237.1. — In general.

238. — Requisites and sufficiency.

239. — Part payment and application of payments.

240. Payment to subcontractors or contractors' workers or materialmen.

241. Satisfaction other than payment.

242. Entry of satisfaction of record.

243. Effect of release or satisfaction.

244. Rights of third persons making payment or satisfaction.

XI. ENFORCEMENT.

245. Nature and form of remedy in general.

(1). In general.

(2). Legal or equitable.

(3). Personal or in rem.

246. Exclusiveness of statutory remedy.

247. Removal of improvements from premises.

249. Conditions precedent.

250. Compelling enforcement.

251. Restraining enforcement.

252. Joinder of liens in same proceeding.

253. Defenses in general.

254. Set-off and counterclaim.

(1). In general.

(2). Damages for default in performance of contract.

255. Persons entitled to enforce.

256. Persons entitled to contest in general.

257. Contest by contractors of liens of subcontractors, workmen, and materialmen.

258. Jurisdiction.

259. Venue.

260. Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

(1). In general.

(2). When suit may be brought.

(3). When period begins to run.

(4). Commencement of suit.

(5). Necessity of obtaining judgment within statutory period.

XI. ENFORCEMENT.(Cont'd)

(6). Effect of delay beyond statutory period.

261. Parties.

261.1. — In general.

262. — Plaintiffs.

(1). In general.

(2). Assignment of contract or lien.

263. — Defendants.

(5). In general.

(1). Proper and necessary parties in general.

(2). Husband and wife.

(3). Owners in general.

(4). Transfer of title.

(5). Death of owner.

(6). Lienors and incumbrancers in general.

(7). Mortgagees and bondholders.

(8). Other persons claiming or entitled to mechanic's lien.

(9). Contractor or other person employing claimant.

(10). Effect of dismissal or failure to join proper parties.

264. — Addition or substitution.

264.1. Intervention.

265. Process in general.

266. Attachment.

267. Writ of scire facias.

268. Notice of pendency of action.

269. Pleading.

269.1. — In general.

271. — Declaration, bill, complaint, or petition.

(5). In general.

(1). Form, requisites, and sufficiency in general.

(2). Showing as to purpose of suit and relief demanded.

(3). Description of property.

(4). Averments as to ownership or possession of property and persons interested therein.

(5). Description of improvement.

(6). Description of services or materials and purposes of furnishings.

(7). Averments as to agreement or consent of owner.

(8). Averments as to terms of contract.

257. MECHANICS' LIENS**XI. ENFORCEMENT.(Cont'd)**

- (9). Averments as to time of furnishing work or materials.
- (10). Averments as to completion of work or performance of contract.
- (11). Averments as to amount due or to become due to plaintiff.
- (12). Averments as to owner's indebtedness to contractor employing plaintiff.
- (13). Itemized statement or account, or bill of particulars.
- (14). Averments as to notice to owner.
- (15). Averments as to claim or statement and filing thereof.
- (16). Averments as to notice of lis pendens.
- (17). Anticipation of defenses.
- (18). Joinder of counts or claims.
- (19). Verification.
- 272. — Plea, answer, or affidavit of defense.
- 273. — Cross-bill or cross-complaint, and answer thereto.
- 274. — Replication or reply.
- 275. — Demurrer or exception.
- 276. — Amendment.
 - (.5). In general.
 - (1). Right to amend in general.
 - (2). Amendments allowed.
 - (3). Right to answer or plead to amended pleading.
- 277. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Defenses raised by plea.
 - (5). Variance between pleading and claim or statement.
 - (6). Variance between pleading and proof.
- 278. Evidence.
 - 278.1. — In general.
- 279. — Presumptions and burden of proof.
- 280. — Admissibility.
 - (1). In general.

XI. ENFORCEMENT.(Cont'd)

- (2). Quality, quantity, and value of work or materials.
- (3). Contract and making thereof.
- (4). State of accounts between owner and contractor employing plaintiff.
- (5). Book accounts and explanations thereof.
- (6). Lien claim or statement and record thereof.
- 281. — Weight and sufficiency.
 - (1). In general.
 - (2). Time of commencement and completion of work.
 - (3). Agreement or consent of owner and terms thereof.
 - (4). Indebtedness of defendant and amount thereof.
 - (5). Notice or claim of lien.
- 282. Injunction.
- 283. Receiver.
- 284. Dismissal before hearing.
- 285. Reference.
- 286. Trial or hearing.
- 287. — In general.
- 288. — Questions for jury.
 - (1). In general.
 - (2). Agreement or consent of owner and terms thereof.
 - (3). Commencement and completion of work.
 - (4). Character of building or work.
 - (5). Description of property.
- 289. — Instructions.
- 290. — Verdict and findings.
 - (.5). In general.
 - (1). Necessity.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Responsiveness to issues.
 - (4). Construction and interpretation.
 - (5). Contradictory findings.
 - (6). Indefiniteness.
- 291. Judgment or decree.
 - (.5). In general.
 - (1). Rendition, form, and requisites in general.
 - (2). Judgment by default.
 - (3). Sufficiency in general.

257A. MENTAL HEALTH**XI. ENFORCEMENT.**(Cont'd)

- (4). Description and extent of land.
- (5). Conformity to process, pleadings, proofs, and verdict or findings.
- (6). Directions as to sale or lease, and priorities and distribution of proceeds.
- (7). Operation and effect.
- (8). Amendment.
- 292. Execution and enforcement of judgment in general.
- 293. Sale.
- 294. — In general.
- 295. — Mortgaged or otherwise incumbered property.
- 296. — Manner, conduct, and validity.
- 297. — Confirming, vacating, or setting aside.
- 298. — Title and rights of purchaser.
- 299. — Redemption.
- 300. — Conveyance to purchaser.
- 301. Deficiency and personal liability.
- 301.1. — In general.
- 302. — Liability for deficiency.
- 303. — Personal liability on failure to establish lien.
 - (1). In general.
 - (2). Liability as affected by existence or loss of lien.
 - (3). Liability of owner in suit by sub-contractor.
- 304. — Personal judgment against owner.
 - (1). In general.
 - (2). Persons acquiring title subsequent to lien.
 - (3). Privity of contract between owner and claimant.
 - (4). Validity of original contract.
- 305. — Personal judgment against contractor.
- 307. — Actions to enforce personal liability.
- 308. Proceeds and surplus.
- 309. Review.
- 310. Fees and costs.
 - (1). In general.
 - (2). Allowance dependent on establishment of lien.
 - (3). Items and amount allowable.
 - (4). Persons and property liable.

XII. INDEMNITY AGAINST LIENS.

- 312. Indemnity by contractor to owner in general.
- 313. Contractors' bonds.
- 314. Estoppel of sureties to claim lien.
- 315. Liabilities on bonds.
- 317. Actions on bonds.

257A. MENTAL HEALTH**SUBJECTS INCLUDED**

Promotion of mental health

Care and treatment of persons affected by mental disorder of any kind not merely temporary in nature

Custody and protection of such persons and their property

Rights and disabilities of mentally disordered persons in general

Legal proceedings affecting such persons

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable and reformatory institutions, see **ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS**

Chemical dependents, see **CHEMICAL DEPENDENTS**

Civil liabilities arising out of patient care, failure to protect patient from injury, and failure to protect third party from acts of patient, see **HEALTH**

Criminal prosecutions, insanity at the time of commission of an offense as a defense, see **CRIMINAL LAW**

Limitation statute, effect of disability on running of, see **LIMITATION OF ACTIONS**

Mental condition as a factor in sentencing generally, see also **SENTENCING AND PUNISHMENT**

Temporary mental disability and mental disability respecting particular transactions, see **CONTRACTS, REAL PROPERTY CONVEYANCES**, and other specific topics

257A. MENTAL HEALTH

Testamentary capacity, see WILLS

Witnesses, competency as, see WITNESSES

I. IN GENERAL, § 1–30.**II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS, § 31–100.**

(A) CUSTODY AND CURE, § 31–70.

(B) SUPPORT, § 71–100.

III. GUARDIANSHIP AND PROPERTY OF ESTATE, § 101–330.

(A) GUARDIANSHIP IN GENERAL, § 101–210.

(B) PROPERTY AND MANAGEMENT OF MENTALLY DISORDERED PERSON'S ESTATE, § 211–290.

(C) ACCOUNTING AND SETTLEMENT, § 291–330.

IV. DISABILITIES AND PRIVILEGES OF MENTALLY DISORDERED PERSONS, § 331–470.

(A) IN GENERAL, § 331–350.

(B) CAPACITY TO TAKE AND HOLD PROPERTY, § 351–370.

(C) CONTRACTS AND TRANSFERS OF PROPERTY, § 371–410.

(D) TORTS, § 411–430.

(E) CRIMES, § 431–470.

V. ACTIONS, § 471–518.**I. IN GENERAL.**

1. Promotion of mental health in general.
2. Constitutional and statutory provisions.
3. Who are mentally ill or mentally deficient.
- 3.1. — In general.
4. — Tests and symptoms of mental disorder.
5. — Kinds and degrees of mental illness or deficiency.
6. Determination of mental disorder in general.
7. Burden of proof.
8. Admissibility of evidence.
- 8.1. — In general.
9. — Competency with regard to time.
10. Weight and sufficiency of evidence.
- 10.1. — In general.
11. — Degree of proof.
12. — Nature of evidence.
13. Questions of law and fact.
14. Conclusiveness and effect of determination.
- 14.1. — In general.

I. IN GENERAL.(Cont'd)

15. — Determination of mental health.
16. — Determination of mental disorder in general.
17. — Mental disorder prior to determination.
18. — Mental disorder subsequent to determination.
19. Restoration to mental health, conclusiveness and effect.
20. Mental health officers, departments, and agencies.
21. Records and confidential communications.

II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS.**(A) CUSTODY AND CURE.**

31. Control and custody in general.
32. Constitutional and statutory provisions.
33. Jurisdiction and venue.
34. Powers of guardian.
35. Removal from jurisdiction.
36. Persons subject to control or treatment.
37. Admission or commitment procedure.
- 37.1. — In general.
38. — Parties and application.
39. — Process and notice.
40. — Apprehension and custody pending determination.
- 40.1. — Examination.
- 40.2. — Guardian ad litem.
- 40.3. — Counsel.
 - (1). In general.
 - (2). Right to counsel; waiver, withdrawal, and substitution.
 - (3). Effectiveness.
- 40.4. — Hearing and determination in general.
- 40.5. — Advice and warnings.
- 40.6. — Evidence.
 - (1). In general.
 - (2). Judicial notice.
 - (3). Admissibility in general.
 - (4). Presumptions and burden of proof.
 - (5). Experts.
 - (6). — In general; admissibility.
 - (7). — Necessity.

257A. MENTAL HEALTH**II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS.(Cont'd)**

- (8). — Qualification.
- (9). Weight and sufficiency.
- (10). — In general.
- (11). — Standard of proof in general.
- (12). — Particular cases.
- 40.7. — Confrontation of witnesses.
- 42. — Time of hearing and presence of respondent.
- 42.5. — Instructions.
- 43. — Physicians' certificates and other reports.
- 43.5. — Disposition; consideration of alternatives.
- 44. — Order and record.
- 45. — Review.
- 46. — Costs and expenses.
- 47. Conclusiveness and effect of commitment.
- 47.1. — In general.
- 48. — Mental disorder subsequent to commitment.
- 49. Collateral attack.
- 50. Execution of order of commitment; release on bond or security.
- 51. Restraint or treatment.
See also *§414 below.*
- 51.1. — In general.
- 51.5. — Treatment or medication; training or habilitation.
- 51.10. — Nature or extent of restraint.
- 51.15. — Involuntary treatment or medication.
- 51.20. — Actions and proceedings.
See also HEALTH *§695-703(2).*
- 56. Transfer of custody.
- 57. Sterilization.
- 58. Parole.
- 59. Restoration to mental health and discharge.
- 59.1. — In general.
- 60. — Jurisdiction and proceedings.
- 61. — Conclusiveness and effect of discharge.

(B) SUPPORT.

Support of persons in residential facilities, not including mental hospitals and others primarily providing treatment, due to mental impairment or developmental disability, see ASYLUMS AND ASSISTED LIVING FACILITIES.

II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS.(Cont'd)

- 71. Compensation for support in institution.
- 72. Constitutional and statutory provisions.
- 73. Duties and liabilities in general.
- 74. Relatives, liability.
- 74.1. — In general.
- 75. — Parents.
- 76. — Husband.
- 77. Guardian or committee, liability.
- 78. Public authorities, liability.
- 78.1. — In general.
- 79. — Counties and towns.
- 80. — Residence or settlement.
- 81. Bonds for support.
- 82. Proceedings to enforce liability for support.
- 82.1. — In general.
- 83. — Jurisdiction and parties.
- 84. — Pleading and evidence.
- 85. — Trial and judgment or order.
- 86. — Execution and enforcement of judgment, and review.

III. GUARDIANSHIP AND PROPERTY OF ESTATE.**(A) GUARDIANSHIP IN GENERAL.**

- 101. Nature and grounds.
- 102. Constitutional and statutory provisions.
- 103. Public guardians.
- 104. Persons subject to guardianship.
- 104.1. — In general.
- 105. — Mental incompetency or incapacity in general.
- 106. — Weakness or unsoundness of mind.
- 107. — Old age or infirmity.
- 108. Jurisdiction.
- 108.1. — In general.
- 109. — Particular courts.
- 110. — Residence or situs of property.
- 111. — Acquisition and extent of jurisdiction.
- 112. Venue.
- 113. Appointment in general; family meeting.
- 114. Temporary guardian.
- 115. Appointment for person or estate only.
- 116. Persons who may be appointed.
- 116.1. — In general.
- 117. — Discretion of court.

257A. MENTAL HEALTH**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

- 118. — Heirs, next of kin, and relatives in general.
- 119. — Husband or wife.
- 120. Proceedings for appointment in general.
- 121. Nature and form of proceedings.
- 121.1. — In general.
- 122. — Statutory proceedings; compliance with statutes.
- 123. Determination of mental disorder.
- 124. Parties.
- 125. Death pending proceedings.
- 126. Application or petition.
- 127. Notice.
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- 128. — Necessity.
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- 130. — Form and sufficiency.
- 131. — Service and return.
- 132. — Effect of want of, or irregularity of, notice.
- 133. Appearance and representation by attorney; guardian ad litem.
- 134. Injunction and receiver.
- 135. Evidence.
- 136. Dismissal of proceedings.
- 137. Hearing and determination.
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- 139. — Scope of inquiry and matters considered.
- 140. — Commission.
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- 143. Verdict and findings.
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- 148.1. — In general.
- 149. — Nature and form of remedy and jurisdiction.
- 150. — Decisions reviewable.
- 151. — Right of review; parties.

**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

- 152. — Requisites and proceedings for transfer; effect of appeal.
- 153. — Scope of review in general and trial de novo.
- 154. — Presumptions, and discretion of lower court.
- 155. — Questions of fact, verdicts, and findings.
- 156. — Harmless error.
- 157. — Determination and disposition.
- 158. Costs.
- 158.1. — In general.
- 159. — Attorney fees.
- 160. Conclusiveness and effect of appointment or decision in general.
- 160.1. — In general.
- 161. — On issue of mental disorder.
- 162. — Presumptions.
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- 164. — Grounds.
- 165. — What constitutes collateral attack.
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- 168. Restoration to mental health and discharge.
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- 170. — Parties, pleading, and evidence.
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- 172. — Review.
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- 174. Removal of guardian.
- 174.1. — In general.
- 175. — Grounds.
- 176. — Proceedings in general.
- 177. — Review.
- 178. Appointment of successor.
- 179. Authority, duties, and liability of guardians in general.
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- 180. Compensation of guardian or committee.
- 180.1. — In general.
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257A. MENTAL HEALTH**III. GUARDIANSHIP AND PROPERTY
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- 186. Lien of guardian for disbursements and compensation.
- 187. Liabilities on guardianship bonds.
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- 189. — Past defaults and liability as between different sureties.
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- 195. — Appointment.
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- 212. Constitutional and statutory provisions.
- 213. Jurisdiction of courts.
- 213.1. — In general.
- 214. — Particular courts.
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- 216. Rights and powers of guardian or committee in general.
- 217. Duties and liabilities of guardian or committee in general.
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- 219. Inventory and collection of assets.
- 220. Title to property.
- 221. Continuance of business.
- 222. Contracts.
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- 224. Investments.
- 224.1. — In general.
- 225. — Character of investment.
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**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

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- 231. Expenditures.
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- 235. Compromise and settlement, and arbitration.
- 236. Election for ward; exercise of powers; insurance rights.
- 237. Individual interest in transactions.
- 238. Waste, conversion, or embezzlement by guardian; loss of property.
- 239. Liabilities of, and claims against, estate.
- 239.1. — In general.
- 240. — Liabilities of estate in general.
- 241. — Contracts in general; necessities.
- 242. — Support of ward in general.
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- 244. — Support in institution.
- 245. — Amount of recovery for support.
- 246. — Allowances for support of family in general.
- 247. — Husband, wife or children, allowance for support.
- 248. — Collateral kindred and other persons, allowances.
- 249. — Nature of allowances to family; conditions.
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- 251. — Counsel fees and costs.
- 252. — Evidence.
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- 255. — Limitations and laches.
- 256. — Hearing and determination.
- 257. — Priorities and payment.
- 258. Sales, transfers, and encumbrances by guardian; order of court.
- 258.1. — In general.
- 259. — Authority to sell or convey in general.
- 260. — Necessity of court approval.
- 261. — Purposes of, and grounds for, sale, and objections.

257A. MENTAL HEALTH**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

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- 264. — Proceedings for sale in general.
- 265. — Parties and application.
- 266. — Notice.
- 267. — Hearing, order or decree, and record.
- 268. — Validity of sale.
- 269. — Confirmation.
- 270. — Vacating or setting aside.
- 271. — Title, rights, and liabilities of purchasers.
- 272. — Collateral attack.
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- 294. Jurisdiction of courts.
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- 299. Form and requisites of account.
- 300. Objections and exceptions.
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- 302. Hearing or reference, and determination.
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- 333. Capacity to appoint agent or trustee.
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- 372. Contracts in general.
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- 373. — Contracts before adjudication or appointment of guardian.
- 374. — Effect of adjudication, commitment, or guardianship.
- 375. Necessaries.
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- 379. Bills and notes.
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- 381. Insurance.
- 382. Conveyances.
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- 388. Gifts.
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- 391. — Restoration of consideration or benefit.
- 392. — Persons entitled to avoidance.
- 393. — Persons as to whom transactions may be avoided.
- 394. — Time for avoidance and laches.
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257A. MENTAL HEALTH**(D) TORTS.**

- 411. Liability of mentally disordered persons in general.
- 412. Particular torts of mentally disordered persons.
- 413. Liability for torts of others.
- 414. Liability of others for torts of mentally disordered persons.
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- 415. Damages.

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- 431. Responsibility and apprehension.
- 432. Mental disorder at time of trial.
- 433. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Sex offenders.
- 434. Examination and determination as to mental disorder.
- 435. Commitment for observation or examination.
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 - 436.1. — In general.
- 437. — Duration of confinement.
- 438. — Restoration to mental health.
- 439. Confinement after acquittal on ground of mental disorder.
 - 439.1. — In general.
- 440. — Discharge from confinement.
- 450. Defective delinquents.
- 451. Support and maintenance.
- 452. Sex offenders.
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- 453. — In general.
- 454. — Persons and offenses included.
- 455. — Jurisdiction and proceedings in general.
- 456. — Nature of proceeding.
- 457. — Petition and application.
- 458. — Notice.
- 459. — Custody pending proceedings.
- 460. — Evidence.
 - (1). In general.
 - (2). Experts.
- 461. — Examination.
- 462. — Hearing.
- 463. — Counsel or guardian ad litem.
- 464. — Judgment or order.
- 465. — Disposition; commitment.
 - (1). In general.

IV. DISABILITIES AND PRIVILEGES OF MENTALLY DISORDERED PERSONS.(Cont'd)

- (2). Duration.
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- 466. — Discharge or continued commitment.
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- 468. — Costs.
- 469. Registration and community notification.
 - (1). In general.
 - (2). Persons and offenses included.
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 - (6). Appeal.
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- 472. Capacity to sue and be sued.
 - 472.1. — In general.
- 473. — Effect of adjudication or guardianship.
- 474. Statutory provisions.
- 475. Rights of action and defenses.
 - 475.1. — In general.
- 476. — Actions by or against guardian.
- 477. Nature of remedy.
- 478. Conditions precedent in general.
- 479. Leave to sue.
- 480. Jurisdiction and venue.
- 481. Parties.
 - 481.1. — In general.
- 482. — Use of name of disordered person or guardian.
- 483. — New parties.
- 484. Representation by general guardian or committee.
- 485. Guardian ad litem or next friend.
 - 485.1. — In general.
- 486. — Propriety of representation.
- 487. — Authority to appoint.
- 488. — Necessity of appointment.
- 489. — Time for appointment and conditions precedent.
- 490. — Proceedings for appointment.

257A. MENTAL HEALTH**V. ACTIONS.**(Cont'd)

- 491. — Order and effect of appointment.
- 492. — Eligibility and qualification.
- 493. — Compensation and expenses.
- 494. — Termination of authority and appointment of successor.
- 495. — Powers, duties, and liabilities.
- 496. — Failure to procure appointment.
- 497. Restoration to mental health pending action.
- 498. Process.
- 498.1. — In general.
- 499. — Persons to be served.
- 500. Appearance and representation by attorney.
- 501. Pleading.
- 501.1. — In general.
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- 503. — Plea or answer and affidavit of defense.
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- 505. Evidence.
- 505.1. — In general.
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- 507. — Admissibility.
- 508. — Weight and sufficiency.
- 509. Trial.
- 509.1. — In general.
- 510. — Questions for jury.
- 511. — Instructions.
- 512. Judgment.
- 512.1. — In general.
- 513. — By consent, confession, or default.
- 514. — Opening or vacating and equitable relief.
- 515. — Collateral attack.
- 516. Execution and enforcement of judgment.
- 517. Review.
- 518. Costs.

258A. MILITARY JUSTICE**SUBJECTS INCLUDED**

The system of justice for the government of the armed forces of the United States and

persons under their control as determined by decisions of military courts

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Armed forces, law relating to generally and decisions of civilian courts thereon, see **ARMED SERVICES**

Military government and martial law, see **WAR AND NATIONAL EMERGENCY**

- I. IN GENERAL, ¶500–549.
- II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES, ¶550–869.
- III. COURTS–MARTIAL, ¶870–919.
- IV. PRETRIAL PROCEEDINGS, ¶920–1019.
 - (A) IN GENERAL, ¶920–949.
 - (B) CHARGES AND SPECIFICATIONS AND ACTION THEREON, ¶950–979.
 - (C) ARRAIGNMENT AND PLEA, ¶980–1019.
- V. EVIDENCE AND WITNESSES, ¶1020–1169.
- VI. TIME FOR TRIAL AND CONTINUANCE, ¶1170–1209.
- VII. TRIAL, ¶1210–1299.
- VIII. SENTENCE, ¶1300–1350.
- IX. RECORD OF TRIAL, ¶1351–1379.
- X. REVIEW OF COURTS–MARTIAL, ¶1380–1459.
 - (A) INITIAL ACTION ON RECORD, ¶1380–1409.
 - (B) FURTHER REVIEW, ¶1410–1459.
 - 1. IN GENERAL, ¶1410–1449.
 - 2. APPEALS BY UNITED STATES, ¶1450–1459.
- XI. EXTRAORDINARY RELIEF, ¶1460–1479.
- XII. REVIEW BY CIVILIAN COURTS, ¶1480–1481.

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- 500. Sources and authority in general.
- 501. Statutes, rules, and regulations in general.
- 502. Code articles.
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258A. MILITARY JUSTICE**I. IN GENERAL.**(Cont'd)

- 506. — Administrative construction.
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- 511. Rules of decision.
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- 512. — Stare decisis.
- 513. — Retroactive application.
- 514. Personal jurisdiction.
Subject matter jurisdiction and service connection, see
⊖552, 555, 561 et seq.; Territorial application, see
⊖523; Jurisdiction of Courts-Martial, see ⊖893–898.
- 514.1. — In general.
- 515. — Military status of accused in general.
- 516. — After expiration of term of enlistment.
- 517. — Validity of induction or enlistment.
- 518. — Constructive induction or enlistment.
- 519. — Reservists; National Guard personnel.
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- 523. Territorial application.
- 524. Concurrent and exclusive.
- 525. Non-judicial punishment.
- 526. Command influence.
- 527. Application of the Constitution to the military in general.
- 528. Particular provisions, applicability.
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- 528.1. — In general.
- 529. — Equal protection.
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- 530. — Due process.
See also CONSTITUTIONAL LAW ⊖4245.
- 531. — Ex post facto laws; Bills of Attainder.
See also, CONSTITUTIONAL LAW ⊖1100(6), 2842.
- 532. — Cruel and unusual punishment.
- 533. — First amendment rights, free speech.
- 534. — Self-incrimination.

II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES.

- 550. Offenses in general.
- 551. Different offenses in same transaction.
- 552. Subject matter jurisdiction and service connection in general.
- 553. Sex offenses in general.
- 554. — In general; nature and elements.
- 555. — Subject matter jurisdiction; service connection.
- 556. — Pleadings.
- 557. — Evidence.
- 558. — Instructions.
- 559. Rape and carnal knowledge.
- 560. — In general; nature and elements.
- 561. — Subject matter jurisdiction; service connection.
- 562. — Pleadings.
- 563. — Evidence.
- 564. — Instructions.
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- 566. — In general; nature and elements.
- 567. — Subject matter jurisdiction; service connection.
- 568. — Pleadings.
- 569. — Evidence.
- 570. — Instructions.
- 571. Indecent acts.
- 572. — In general; nature and elements.
- 573. — Subject matter jurisdiction; service connection.
- 574. — Pleadings.
- 575. — Evidence.
- 576. — Instructions.
- 577. Perjury and false statements.
- 578. — In general; nature and elements.
- 579. — Subject matter jurisdiction; service connection.
- 580. — Pleadings.
- 581. — Evidence.
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- 584. — In general; nature and elements.
- 585. — Subject matter jurisdiction; service connection.
- 586. — Pleadings.
- 587. — Evidence.
- 588. — Instructions.
- 589. Assault, escape, and related offenses in general.

258A. MILITARY JUSTICE**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

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- 592. — Pleadings.
- 593. — Evidence.
- 594. — Instructions.
- 595. Assault and battery.
- 596. — In general; nature and elements.
- 597. — Subject matter jurisdiction; service connection.
- 598. — Pleadings.
- 599. — Evidence.
- 600. — Instructions.
- 601. Maiming.
- 602. — In general; nature and elements.
- 603. — Subject matter jurisdiction; service connection.
- 604. — Pleadings.
- 605. — Evidence.
- 606. — Instructions.
- 607. Extortion.
- 608. — In general; nature and elements.
- 609. — Subject matter jurisdiction; service connection.
- 610. — Pleadings.
- 611. — Evidence.
- 612. — Instructions.
- 613. Communicating a threat.
- 614. — In general; nature and elements.
- 615. — Subject matter jurisdiction; service connection.
- 616. — Pleadings.
- 617. — Evidence.
- 618. — Instructions.
- 619. Escape.
- 620. — In general; nature and elements.
- 621. — Subject matter jurisdiction; service connection.
- 622. — Pleadings.
- 623. — Evidence.
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- 625. Resisting apprehension or arrest.
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- 628. — Pleadings.
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**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

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- 631. Homicide generally.
- 632. — In general; nature and elements.
- 633. — Subject matter jurisdiction; service connection.
- 634. — Pleadings.
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- 636. — Instructions.
- 637. Murder.
- 638. — In general; nature and elements.
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- 640. — Pleadings.
- 641. — Evidence.
- 642. — Instructions.
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- 644. — In general; nature and elements.
- 645. — Subject matter jurisdiction; service connection.
- 646. — Pleadings.
- 647. — Evidence.
- 648. — Instructions.
- 649. Negligent homicide.
- 650. — In general; nature and elements.
- 651. — Subject matter jurisdiction; service connection.
- 652. — Pleadings.
- 653. — Evidence.
- 654. — Instructions.
- 655. Desertion, absence, or missing movement in general.
- 656. — In general; nature and elements.
- 657. — Subject matter jurisdiction; service connection.
- 658. — Pleadings.
- 659. — Evidence.
- 660. — Instructions.
- 661. Desertion.
- 662. — In general; nature and elements.
- 663. — Subject matter jurisdiction; service connection.
- 664. — Pleadings.
- 665. — Evidence.
- 666. — Instructions.
- 667. Unauthorized absence.
- 668. — In general; nature and elements.

258A. MILITARY JUSTICE**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

- 669. — Subject matter jurisdiction; service connection.
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- 672. — Instructions.
- 673. Missing movement.
- 674. — In general; nature and elements.
- 675. — Subject matter jurisdiction; service connection.
- 676. — Pleadings.
- 677. — Evidence.
- 678. — Instructions.
- 679. Failure to obey order or regulation and dereliction of duty in general.
- 680. Failure to obey order or regulation.
- 681. — In general; nature and elements.
- 682. — Subject matter jurisdiction; service connection.
- 683. — Pleadings.
- 684. — Evidence.
- 685. — Instructions.
- 686. — Validity or legality of order.
- 687. Dereliction of duty.
- 688. — In general; nature and elements.
- 689. — Subject matter jurisdiction; service connection.
- 690. — Pleadings.
- 691. — Evidence.
- 692. — Instructions.
- 693. Disrespect toward superior.
- 694. — In general; nature and elements.
- 695. — Subject matter jurisdiction; service connection.
- 696. — Pleadings.
- 697. — Evidence.
- 698. — Instructions.
- 699. Larceny and theft and related offenses in general.
- 700. — In general; nature and elements.
- 701. — Subject matter jurisdiction; service connection.
- 702. — Pleadings.
- 703. — Evidence.
- 704. — Instructions.
- 705. Larceny.
- 706. — In general; nature and elements.
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**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

- 708. — Pleadings.
- 709. — Evidence.
- 710. — Instructions.
- 711. Wrongful appropriation.
- 712. — In general; nature and elements.
- 713. — Subject matter jurisdiction; service connection.
- 714. — Pleadings.
- 715. — Evidence.
- 716. — Instructions.
- 717. Robbery.
- 718. — In general; nature and elements.
- 719. — Subject matter jurisdiction; service connection.
- 720. — Pleadings.
- 721. — Evidence.
- 722. — Instructions.
- 723. Burglary and housebreaking.
- 724. — In general; nature and elements.
- 725. — Subject matter jurisdiction; service connection.
- 726. — Pleadings.
- 727. — Evidence.
- 728. — Instructions.
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- 731. — Subject matter jurisdiction; service connection.
- 732. — Pleadings.
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- 737. — Subject matter jurisdiction; service connection.
- 738. — Pleadings.
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- 742. — In general; nature and elements.
- 743. — Subject matter jurisdiction; service connection.
- 744. — Pleadings.
- 745. — Evidence.
- 746. — Instructions.
- 747. Check offenses.
- 748. — In general; nature and elements.

258A. MILITARY JUSTICE**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

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- 750. — Pleadings.
- 751. — Evidence.
- 752. — Instructions.
- 753. General article violations in general.
- 754. — In general; nature and elements.
- 755. — Subject matter jurisdiction; service connection.
- 756. — Pleadings.
- 757. — Evidence.
- 758. — Instructions.
- 759. Disorders and neglect prejudicial to good order and discipline.
- 760. — In general; nature and elements.
- 761. — Subject matter jurisdiction; service connection.
- 762. — Pleadings.
- 763. — Evidence.
- 764. — Instructions.
- 765. Solicitation.
- 766. — In general; nature and elements.
- 767. — Subject matter jurisdiction; service connection.
- 768. — Pleadings.
- 769. — Evidence.
- 770. — Instructions.
- 771. Crimes and offenses not capital.
- 772. — In general; nature and elements.
- 773. — Subject matter jurisdiction; service connection.
- 774. — Pleadings.
- 775. — Evidence.
- 776. — Instructions.
- 777. Conduct unbecoming an officer.
- 778. — In general; nature and elements.
- 779. — Subject matter jurisdiction; service connection.
- 780. — Pleadings.
- 781. — Evidence.
- 782. — Instructions.
- 783. Alcohol or drug offenses.
- 784. — In general; nature and elements.
- 785. — Subject matter jurisdiction; service connection.
- 786. — Pleadings.
- 787. — Evidence.

**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

- 788. — Instructions.
- 789. Miscellaneous offenses.
- 790. — In general; nature and elements.
- 791. — Subject matter jurisdiction; service connection.
- 792. — Pleadings.
- 793. — Evidence.
- 794. — Instructions.
- 795. Attempts.
- 796. — In general; nature and elements.
- 797. — Subject matter jurisdiction; service connection.
- 798. — Pleadings.
- 799. — Evidence.
- 800. — Instructions.
- 801. Responsibility; persons liable.
- 801.1. — In general.
- 802. — Subject matter jurisdiction; service connection.
- 803. — Pleadings.
- 804. — Evidence.
- 805. — Instructions.
- 806. Aiders, abettors and accomplices.
- 806.1. — In general.
- 807. — Subject matter jurisdiction; service connection.
- 808. — Pleadings.
- 809. — Evidence.
- 810. — Instructions.
- 811. Principals.
- 811.1. — In general.
- 812. — Subject matter jurisdiction; service connection.
- 813. — Pleadings.
- 814. — Evidence.
- 815. — Instructions.
- 816. Accessories before the fact.
- 816.1. — In general.
- 817. — Subject matter jurisdiction; service connection.
- 818. — Pleadings.
- 819. — Evidence.
- 820. — Instructions.
- 821. Accessories after the fact.
- 821.1. — In general.
- 822. — Subject matter jurisdiction; service connection.

258A. MILITARY JUSTICE**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.**(Cont'd)

- 823. — Pleadings.
- 824. — Evidence.
- 825. — Instructions.
- 826. Conspirators.
- 826.1. — In general.
- 827. — Nature and elements of conspiracy.
- 828. — Subject matter jurisdiction; service connection.
- 829. — Pleadings.
- 830. — Evidence.
- 831. — Instructions.
- 832. Defenses in general.
- 833. Evidence in general.
- 834. Burden of proof in general.
- 835. Weight and sufficiency in general.
- 836. Self-defense.
- 837. Ignorance or mistake of fact or law.
- 838. Inability.
- 839. Coercion or duress.
- 840. Accident.
- 841. Obedience to orders.
- 842. Alibi.
- 843. Mental incapacity.
- 843.1. — In general.
- 844. — Capacity to form intent.
- 845. — Intoxication; drug use.
- 846. — Homicide cases.
- 847. Entrapment.
- 847.1. — In general.
- 848. — Drug cases.
- 849. Grant of immunity.
- 850. Limitation of prosecutions.
- 850.1. — In general.
- 851. — Statute of limitations in general.
- 852. — Time of war.
- 853. Former jeopardy.

III. COURTS-MARTIAL

Excludes trial and defense counsel, see ¶1235–1245, and 1253–1262.

- 870. Classification and composition in general.
- 871. Enlisted members.
- 871.1. — In general.
- 872. — Selection.
- 873. — Requests for.
- 874. Trial by military judge alone.
- 874.1. — In general.

III. COURTS-MARTIAL.(Cont'd)

- 875. — Requests and proceedings thereon.
- 876. — Withdrawal of requests.
- 877. Convening authority in general.
- 877.1. — In general.
- 878. — As accuser.
- 879. Convening courts-martial; detailing members.
- 879.1. — In general.
- 880. — Delegation of power.
- 881. Military judges; magistrates.
- 881.1. — In general.
- 882. — Disqualification.
- 883. Reporters and interpreters.
- 884. Disqualification of members.
- 884.1. — In general.
- 885. — Inelastic attitude toward sentence.
- 886. — Prior participation in case or related case.
- 887. — Member as witness.
- 888. Absent and additional members.
- 889. Challenge of members; waiver.
- 889.1. — In general.
- 890. — Voir dire; procedure.
- 891. — Challenges for cause.
- 892. — Peremptory challenges.
- 893. Nature and scope of jurisdiction in general.
Excludes subject matter jurisdiction, see ¶552, 555, 561 et seq.; and personal jurisdiction, see ¶514–522.
- 894. Contempts.
- 895. Termination of jurisdiction.
- 896. Exclusive and concurrent jurisdiction.
- 897. General, special and summary courts-martial jurisdiction.
- 898. Objections to jurisdiction, determination, and waiver.

IV. PRETRIAL PROCEEDINGS.**(A) IN GENERAL.**

- 920. Proceedings in general.
- 921. Pretrial investigation.
- 921.1. — In general.
- 922. — Appointing.
- 923. — Purposes.
- 924. — Production of witnesses and evidence.
- 925. — Disqualification of investigating officer.

258A. MILITARY JUSTICE**IV. PRETRIAL PROCEEDINGS.(Cont'd)**

- 926. — Right to counsel.
- 927. Pretrial advice.
- 927.1. — In general.
- 928. — Disqualification of staff judge advocate to give.
- 929. — Contents.
- 930. — Objections to; waiver.
- 931. Disclosure.
- 931.1. — In general.
- 932. — Jencks Act.
- 933. — Discovery.
- 934. — Depositions.
- 935. Arrest or apprehension.
- 935.1. — In general.
- 936. — Probable cause requirement.
- 937. — Investigative stops; frisks.
- 938. Pretrial restraint or confinement.
- 938.1. — In general.
- 939. — Justification.
- 940. — Procedures for review; magistrate.
- 941. — Information as to charge.
- 942. — Remedies.

See also Ⓒ1461.

(B) CHARGES AND SPECIFICATIONS AND ACTION THEREON.

- 950. Charges and specifications in general.
- 951. Preferral of charges.
- 951.1. — In general.
- 952. — Accuser's oath.
- 953. Sufficiency of allegations.
- 953.1. — In general.
- 954. — Jurisdictional allegations.
- 955. — Time; date; location.
- 956. — Identity of accused and victim.
- 957. Joinder.
- 958. — In general.
- 959. — Multiplicity.
- 960. — Inconsistency.
- 961. Amendment.
- 963. Variance.
- 964. Surplusage.
- 965. Lesser included offenses.
- 965.1. — In general.
- 966. — Particular offenses.
- 967. Referral for trial.
- 967.1. — In general.
- 968. — Withdrawal and re-referral.

IV. PRETRIAL PROCEEDINGS.(Cont'd)

- 969. Presentation of unprovable charges.
- 970. Service of charges.
- 971. Objections and waiver.

(C) ARRAIGNMENT AND PLEA.

- 980. Arraignment and plea in general.
- 981. Guilty plea in general.
- 982. Providency or validity in general; voluntariness.
- 983. Mistake or misunderstanding.
- 984. Mental capacity.
- 985. Violation of rights; illegal evidence.
- 986. Factual basis for guilty plea.
- 986.1. — In general.
- 987. — Particular cases.
- 988. — Inconsistent statements or evidence.
- 989. — Validity of plea to lesser offense.
- 990. Pretrial agreement.
See also Ⓒ1326.
- 990.1. — In general.
- 991. — Negotiations.
- 992. — Terms and conditions in general.
- 993. — Post-trial misconduct clauses.
- 994. — Public policy.
- 995. — Advice to accused; judicial inquiry.
See also Ⓒ998.
- 996. — Modifications.
- 997. — Compliance with terms and conditions; effects of noncompliance.
- 998. Inquiry, advice, and warnings; determination of validity.
See also Ⓒ995.
- 998.1. — In general.
- 999. — Effect of deficiency.
- 1000. Effect of guilty plea; waiver of objections and defenses.

V. EVIDENCE AND WITNESSES.

- 1020. Evidence in general.
- 1021. Judicial notice of adjudicative facts or law.
- 1022. Presumptions and burden of proof.
Offenses and criminal responsibility, see also Ⓒ557, 563, 569 *et seq.*; *defenses, see also* Ⓒ834, 836–853.
- 1023. Admissibility and effect in general.
- 1024. Relevancy and its limits.
- 1025. — In general.
- 1026. — Balancing relevancy.

258A. MILITARY JUSTICE**V. EVIDENCE AND WITNESSES.(Cont'd)**

- 1027. — Character evidence in general.
- 1028. — Other offenses of accused.
- 1029. — Habit; routine practice.
- 1030. — Subsequent remedial measures in general.
- 1031. — Compromise and offers to compromise.
- 1032. — Payment of medical and similar expenses.
- 1033. — Pleas, plea discussions and related statements.
- 1034. — Liability insurance.
- 1035. — Sexual offenses; victim's past behavior.
- 1036. Degrading questions.
- 1037. Demonstrative, real and fungible evidence in general.
- 1038. Drugs and narcotics.
- 1038.1. — In general.
- 1039. — Chain of custody.
- 1040. Documentary evidence in general.
Business and public records exceptions to hearsay rule, see also [§1093](#).
- 1041. Authentication in general.
- 1042. Photographs.
- 1043. Contents of writings, recordings, and photographs; best evidence.
- 1044. Illegally obtained evidence in general.
- 1045. Evidence obtained from searches and seizures in general.
- 1045.1. — In general.
- 1046. — Unlawful searches in general.
- 1047. — Application of Fourth Amendment to military.
- 1048. — Persons conducting, instigating or participating in search.
- 1049. Bodily views and intrusions.
- 1049.1. — In general.
- 1050. — Visual examination.
- 1051. — Intrusion into body cavities.
- 1052. — Seizure of bodily fluids.
- 1053. — Intrusions for medical purposes.
- 1054. — Medical qualifications.
- 1056. Administrative inspections.
- 1057. Administrative inventories.
- 1058. Searches not requiring probable cause.
- 1058.1. — In general.
- 1059. — Border searches.

V. EVIDENCE AND WITNESSES.(Cont'd)

- 1060. — Searches upon entry to installations, aircraft and vessels abroad.
- 1061. — Searches of government property.
- 1062. — Consent searches.
- 1063. — Frisks incident to a stop.
- 1064. — Searches incident to an apprehension.
- 1065. — Searches within jails and confinement facilities.
- 1066. — Emergency searches to save life.
- 1067. — Searches of open fields or woodlands.
- 1068. Probable cause searches.
- 1068.1. — In general.
- 1069. — Probable cause in general.
- 1070. — Power to authorize.
- 1071. — Power to search.
- 1072. Probable cause determination.
- 1072.1. — In general.
- 1073. — Hearsay; reliability of informant.
- 1074. — Exigencies justifying search without authorization.
- 1075. Form, scope, and execution.
- 1076. Seizures.
- 1076.1. — In general.
- 1077. — Property or evidence; abandoned property.
- 1078. — Plain view.
- 1079. — Power to seize.
- 1080. Interception of wire and oral communications.
- 1081. Motions to suppress illegally obtained evidence and objections.
- 1081.1. — In general.
- 1082. — Standing to object.
- 1083. — Burden of proof.
- 1084. — Defense evidence.
- 1085. — Scope of motions and objections challenging probable cause.
- 1086. Hearsay in general.
- 1087. Definitions.
- 1088. Hearsay exceptions; availability of declarant immaterial.
- 1088.1. — In general.
- 1089. — Present sense impression; excited utterance.
- 1090. — Then existing mental, emotional, or physical condition.

258A. MILITARY JUSTICE**V. EVIDENCE AND WITNESSES.(Cont'd)**

- 1091. — Statements for purposes of medical diagnosis or treatment.
- 1092. — Recorded recollection.
- 1093. — Records of regularly conducted activity; public records.
See also ⅈ1040.
- 1094. — Absence of record or entry.
- 1095. — Residual exception.
- 1096. Hearsay exceptions; declarant unavailable.
- 1097. — In general; definitions.
- 1098. — Exceptions.
- 1099. Identification evidence.
- 1099.1. — In general.
- 1100. — Improper pretrial identification process.
- 1101. — Independent basis for in-court identification.
- 1102. — Motions to suppress and objections.
- 1103. — Burden of proof.
- 1104. — Defense evidence.
- 1105. — Rulings.
- 1106. Confessions and admissions.
- 1106.1. — In general.
- 1107. — Involuntary statements or derivative evidence in general.
- 1108. — Effect of illegal detention or illegally obtained evidence.
- 1109. — Warnings about rights.
- 1110. — Warnings concerning accusation, right to remain silent and use of statements.
- 1111. — Counsel rights and warnings.
- 1112. — Notice to counsel.
- 1113. — Exercise of rights; termination of questioning.
- 1114. — Waiver.
- 1115. Corroboration of confession.
- 1116. Procedure; motions and objections regarding confessions.
- 1116.1. — In general.
- 1117. — Burden of proof.
- 1118. — Defense evidence.
- 1119. Statements by one of several accused.
- 1120. Opinions and expert testimony.
Examination and cross-examination, see also ⅈ1141 *et seq.*
- 1121. Weight and sufficiency.

Offenses and criminal responsibility, see also ⅈ557, 563, 569 *et seq.*; *Defenses, see also* ⅈ835–853.

- 1121.1. — In general.
- 1122. — Jurisdiction.
- 1123. Witnesses in general.
- 1124. Compulsory process; refusal to appear or testify.
- 1125. Competency of witnesses.
- 1126. Privileges.
- 1126.1. — In general.
- 1127. — Lawyer—client.
- 1128. — Husband—wife.
- 1129. — Physician—patient.
- 1130. — Identity of informant.
- 1131. — Waiver of privilege.
- 1132. — Comment upon or inference from claim of privilege; instruction.
- 1133. — Privilege concerning mental examination of an accused.
- 1134. Self-incrimination.
- 1134.1. — In general.
- 1135. — Standing.
- 1136. — Waiver by a witness.
- 1137. — Waiver by accused.
- 1138. — Effect of claiming privilege.
- 1139. — Instructions.
- 1140. Immunity or agreement; informers.
- 1141. Examination of witnesses in general.
- 1142. Cross-examination in general.
- 1143. Impeachment and corroboration.
- 1143.1. — In general.
- 1144. — Interest and bias of witness.
- 1145. — Character and conduct in general.
- 1146. — Prior convictions.
- 1147. Writing used to refresh memory.
- 1148. Prior statements of witnesses.
- 1149. Examining witness concerning prior statement.
- 1149.1. — In general.
- 1150. — Extrinsic evidence of prior inconsistent statement.
- 1151. Calling and interrogation of witnesses by court-martial.
- 1152. Exclusion of witnesses; sequestration.

VI. TIME FOR TRIAL AND CONTINUANCE.

- 1170. Time for trial and speedy trial in general.
- 1171. Delay in trial.
- 1172. — In general.

258A. MILITARY JUSTICE**VI. TIME FOR TRIAL AND
CONTINUANCE.(Cont'd)**

- 1173. — Demand for trial; objections to delay; waiver.
- 1174. — Delay when pretrial confinement or restraint.
- 1175. — Government delay.
- 1176. — Defense delay.
- 1177. — Accountability; computation of delay.
- 1178. — Reasonable diligence; excuses for delay.
- 1179. Delay in preferring or forwarding charges.
- 1180. Delay in pretrial investigation.
- 1180.1. — In general.
- 1181. — Absence of evidence and witnesses.
- 1182. Delay when multiple or additional charges or specifications.
- 1183. Timeliness of rehearing.
- 1184. Effect of delay; remedy.
- 1185. Motions and determination thereof.
- 1186. Presumption of prejudice; rebuttal.
- 1187. Continuances.
- 1187.1. — In general.
- 1188. — Grounds.

VII. TRIAL.

Excludes arraignment and plea, see ¶980–1000.

- 1210. Trial.
- 1210.1. — In general.
- 1211. — Declaration of mistrial in general.
- 1212. — Behavior of members.
- 1213. — Applicability of Fed.R.Crim.P.
- 1214. Fair trial; pretrial publicity.
- 1214.1. — In general.
- 1215. — Fair trial in general.
- 1216. — Pretrial publicity.
- 1217. Joint or separate trials.
See ¶959 for multiplicitious charging.
 - (1). In general.
 - (2). Joint or separate trial of accuseds.
 - (3). Joinder of charges.
 - (4). Severance of charges.
 - (5). — In general.
 - (6). — Grounds.
 - (7). — Particular charges.
- 1222. Public trial.
- 1222.1. — In general.

VII. TRIAL.(Cont'd)

- 1223. — Constitutional questions.
- 1224. — Standards for exclusion of spectators.
- 1225. — Classified and other governmental information.
- 1226. Place of trial; change of venue.
- 1227. Accused's right to be present; waiver.
- 1228. Custody and restraint of accused.
- 1229. Presence of members.
- 1230. Statements and conduct of military judge.
- 1230.1. — In general.
- 1231. — Advice to accused.
- 1232. — Questioning witnesses.
- 1233. — Ex parte communications.
- 1234. — As witness.
- 1235. Trial counsel.
Excludes conduct and argument, see ¶1253–1262.
- 1235.1. — In general.
- 1236. — Detailing.
- 1237. — Qualifications and disqualifications.
- 1238. Defense counsel.
Excludes conduct and argument, see ¶1253–1262.
- 1238.1. — In general.
- 1239. — Detailing.
- 1240. — Qualifications.
- 1241. — Establishing and severing attorney-client relationship.
- 1242. — Effective assistance of counsel; multiple representation.
- 1243. — Individual military counsel.
- 1244. — Post-trial duties.
Appellate counsel, see ¶1412.
- 1245. — Civilian counsel.
- 1246. Mental capacity to stand trial.
- 1247. Reception of evidence.
- 1247.1. — In general.
- 1248. — Accused's right of confrontation with witnesses.
- 1249. Stipulations.
- 1249.1. — In general.
- 1250. — Fact.
- 1251. — Expected testimony.
- 1252. — Confessional stipulation.
- 1253. Argument of counsel.
- 1254. — In general.
- 1255. — Personal opinions.
- 1256. — Inflammatory argument.

258A. MILITARY JUSTICE**VII. TRIAL.**(Cont'd)

- 1257. — Based on matters in evidence.
- 1258. — Comment on accused's request for counsel.
- 1259. — Comment on accused's failure to make statement or to testify.
- 1260. Conduct of counsel.
- 1260.1. — In general.
- 1261. — Ex parte communications.
- 1262. — Duty of trial counsel to disclose material favorable to defense.
- 1263. Instructions.
- 1263.1. — In general.
- 1264. — Duty to instruct; evidence raising issues.
- 1265. — Lesser included offenses.
- 1266. — Defenses.
- 1267. — On evidence.
- 1268. — Sufficiency or propriety; error cured by other instructions.
- 1269. — Requests and objections.
- 1270. Deliberations and voting.
- 1270.1. — In general.
- 1271. — Members' requests for additional evidence.
- 1272. Findings.
Excludes lesser included offenses, see ¶965, 966.
- 1272.1. — In general.
- 1273. — Announcement.
- 1274. — Special findings, requests for.
- 1275. — Impeachment.
- 1276. — Correction; reconsideration.
- 1277. New trial.
- 1278. Objections; waiver.

VIII. SENTENCE.

- 1300. Presentencing procedure.
- 1300.1. — In general.
- 1301. — Deliberations.
- 1302. — Announcement.
- 1303. — Reconsideration.
- 1304. — Requests for additional evidence.
- 1305. Presentencing evidence.
- 1305.1. — In general.
- 1306. — Matters in aggravation.
- 1307. — Matters in extenuation and mitigation.
- 1308. — Right of allocution.
- 1309. — Unsworn statements.

VIII. SENTENCE.(Cont'd)

- 1310. Use of records of convictions.
- 1310.1. — In general.
- 1311. — Summary courts-martial without counsel.
- 1312. Use of records of non-judicial punishment.
- 1312.1. — In general.
- 1313. — Right to confer with counsel; waiver.
- 1314. — Right to object.
- 1315. — Records; service regulations.
- 1316. Presentencing argument.
- 1316.1. — In general.
- 1317. — Inflammatory argument.
- 1318. — Evidence of record.
- 1319. — Sentencing philosophies.
- 1320. — Number and order of arguments.
- 1321. Military judges role; instructions.
- 1322. Nature and extent of punishment.
- 1322.1. — In general.
- 1323. — Maximum punishments.
- 1324. — Sentence credit.
- 1325. Separate or multiplicitous offenses.
- 1326. Effect of pretrial agreement.
See also ¶990–997.
- 1327. Construction and operation of sentence; effective date.
- 1328. Execution of sentence.
- 1328.1. — In general.
- 1329. — Place of confinement.
- 1330. — Good time computations; parole.
- 1331. — Suspension.

IX. RECORD OF TRIAL.

- 1351. Preparation.
- 1352. Authentication.
- 1353. Certificate of correction.
- 1354. Verbatim record of trial.
- 1355. Sufficiency to permit review.
- 1356. Sufficiency to support punishment.
- 1357. Classified information; protection and access.

X. REVIEW OF COURTS-MARTIAL.**(A) INITIAL ACTION ON RECORD.**

- 1380. Convening authority; review and approval.
- 1381. Disqualification of convening authority.

258A. MILITARY JUSTICE**X. REVIEW OF COURTS–MARTIAL.(Cont'd)**

- 1381.1. — In general.
- 1382. — Grants of immunity or clemency.
- 1383. — Other than official interest.
- 1384. Speedy review and action.
- 1385. Staff judge advocate or legal officer's review.
- 1385.1. — In general.
- 1386. — Service on defense counsel; substitute counsel.
- 1387. — Disqualification of officer.
- 1388. — Sufficiency; matters considered or omitted.
- 1389. — Discussion of evidence.
- 1390. — Consideration of defenses.
- 1391. — Matters affecting sentence; clemency.
- 1392. — Incorrect or misleading advice, opinion, or statement.
- 1393. Defense response; opportunity for rebuttal.
- 1393.1. — In general.
- 1394. — Waiver of errors or defects.
- 1395. Determination or relief; approval; matters considered.
- 1395.1. — In general.
- 1396. — Withdrawal; substitution of new action.
- 1397. — Reconsideration; revision.
- 1398. — Reassessment; execution.
- 1399. — Suspension; deferment; commutation of sentence; probation.
- 1400. — Clemency.

(B) FURTHER REVIEW.**1. IN GENERAL.**

- 1410. Review by the Judge Advocate General.
- 1411. Review by the Court of Criminal Appeals (formerly, the Court of Military Review).
- 1412. Appellate counsel.
- 1413. Decisions reviewable.
- 1414. Preservation of grounds of review; waiver; plain error.
- 1414.1. — In general.
- 1415. — Admission or exclusion of evidence.
- 1416. — Trial matters in general.

X. REVIEW OF COURTS–MARTIAL.(Cont'd)

- 1417. — Delay in proceedings.
- 1418. Record and proceedings not in record.
- 1419. Scope of review in general.
- 1420. Discretion of military judge.
- 1421. Presumptions.
- 1422. Questions of fact.
- 1423. Harmless or prejudicial error; test for reversible error.
- 1423.1. — In general.
- 1424. — Pretrial proceedings.
- 1425. — Evidence and witnesses.
- 1426. — Trial matters.
- 1427. — Sentence and sentencing procedure.
- 1428. — Post-trial proceedings.
- 1429. — Delay in proceedings.
- 1430. Appellate disposition.
- 1430.1. — In general.
- 1431. — Affirmance; included offenses.
- 1432. — Dismissal.
- 1433. — Reassessment to cure error.
- 1434. — Remand; rehearing.
- 1435. Matters peculiar to review by the Court of Appeals for the Armed Forces (formerly, the Court of Military Appeals).
- 1435.1. — In general.
- 1436. — Petitions; time for filing.
- 1437. — Certified questions.
- 1438. — Rules of court.
- 1439. — Abatement of appellate review.

2. APPEALS BY UNITED STATES.

- 1450. In general.
- 1451. Scope of review.

XI. EXTRAORDINARY RELIEF.

- 1460. Power to grant and availability in general.
- 1461. Pretrial and post-trial restraint.
- 1462. Writ of error coram nobis.

XII. REVIEW BY CIVILIAN COURTS.

- 1480. Review in general.
- 1481. Habeas corpus.

259. MILITIA**259. MILITIA****SUBJECTS INCLUDED**

National Guard and other armed forces under the control of the states for training and for service in emergencies

Liability to service therein

Enrollment, organization, and discipline

Rights, powers, duties, and liabilities of officers and members

Control and employment in actual service

Offenses against the laws applicable thereto and the military courts administering such laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Exemption of members of the militia from other public service, from taxation, etc., see JURY, TAXATION, and other specific topics

Militia called into the service of the general government, see ARMED SERVICES

Right to bear arms in general, see WEAPONS

1. Power to maintain, regulate, and control.
2. Constitutional and statutory provisions.
3. Establishment and organization.
4. Expenses of maintenance, and funds therefor.
5. Duty of service.
6. Exemptions from service.
7. Officers.
8. Enlistment or enrollment.
9. Term of service.
10. Discharge.
11. Pay and allowances.
12. Civilian employees and contractors.
13. Arms and equipments.
14. Discipline and training in general.
15. Employment in actual service.
16. Encampments.
17. Armories and other buildings.
19. Civil liabilities of members of militia.
20. Offenses by members of militia.
21. Courts-martial.
22. Unauthorized military organizations.

260. MINES AND MINERALS**SUBJECTS INCLUDED**

Mineral substances, solid or fluid, found beneath the surface of the earth, lands containing such minerals, and mines and mining claims or rights

Statutory provisions relating thereto

Acquisition, ownership, and transfer of mining claims and rights

Organization, powers, and franchises of mining partnerships and companies

Rights, duties, and liabilities of proprietors of mineral lands and mines, in respect of the working of their mines, otherwise than in their capacity of employers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Employers, duties and liabilities as, of those working mines, see LABOR AND EMPLOYMENT

Indian mineral rights, see INDIANS ¶191

Partnerships and corporations, matters applicable to in general, see PARTNERSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS

Subterranean waters, rights and liabilities respecting, see WATER LAW

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- I. PUBLIC MINERAL LANDS, ¶1-46.
 - (A) RESERVATION AND DISPOSAL IN GENERAL, ¶1-8.
 - (B) LOCATION AND ACQUISITION OF CLAIMS, ¶9-38.
 - (C) PATENTS, ¶39-46.
 - II. TITLE, CONVEYANCES, AND CONTRACTS, ¶47-85.
 - (A) RIGHTS AND REMEDIES OF OWNERS, ¶47-52.
 - (B) CONVEYANCES IN GENERAL, ¶53-55.
 - (C) LEASES, LICENSES, AND CONTRACTS, ¶56-85.
 1. IN GENERAL, ¶56-60.
 2. CONSTRUCTION AND OPERATION OF MINING LEASES, ¶62-71.
 3. CONSTRUCTION AND OPERATION OF OIL AND GAS LEASES, ¶73-81.

260. MINES AND MINERALS**II. TITLE, CONVEYANCES, AND CONTRACTS—Cont'd****(C) LEASES, LICENSES, AND CONTRACTS—Cont'd****4. CONSTRUCTION AND OPERATION OF LICENSES AND CONTRACTS, §§83–85.****III. OPERATION OF MINES, QUARRIES, AND WELLS, §§86–125.****(A) STATUTORY AND OFFICIAL REGULATIONS, §§86–95.****(B) MINING PARTNERSHIPS AND COMPANIES, §§96–108.****(C) RIGHTS AND LIABILITIES INCIDENT TO WORKING, §§109–125.****I. PUBLIC MINERAL LANDS.****(A) RESERVATION AND DISPOSAL IN GENERAL.**

1. Ownership of minerals.
2. Reservation of lands of United States.
3. Grants to states.
4. Grants by government of minerals and mining rights.
- 4.5. Leases by government.
5. — In general.
- 5.1. — Federal leases.
 - (1). In general.
 - (2). Administrative discretion.
 - (3). Lands subject to lease.
 - (4). Persons entitled and priorities.
 - (5). Construction and effect in general.
 - (6). Assignment of leases.
 - (7). Duration, extension and termination.
 - (8). Rent and royalties.
 - (9). Judicial remedies.
 - (9.1). — In general.
 - (10). — Evidence and fact questions.
- 5.2. — State leases.
 - (1). In general.
 - (2). Texas.
 - (2.1). — In general.
 - (3). — Lease by surface owner under Relinquishment Act.
 - (4). — Vacant land; unsurveyed and unlisted school lands.
- 5.3. — Other government leases.
6. Licenses by government.
- 6.5. Surveys.

I. PUBLIC MINERAL LANDS.(Cont'd)

7. Trespasses.
8. Offenses incident to disposal of mineral lands.
- (B) LOCATION AND ACQUISITION OF CLAIMS.**
9. Lands open to location and acquisition.
10. Persons entitled to acquire lands.
11. — In general.
12. — Citizenship and residence.
13. Requisites and validity of location proceedings.
14. — In general.
 - (1). In general.
 - (2). Location by agent.
15. — Effect of local customs and miners' rules.
16. — Veins, lodes, or placer grounds subject to location.
17. — Discovery.
 - (1). In general.
 - (2). Discovery shaft or opening.
 - (3). Discovery of vein in tunnel claims.
18. — Extent and boundaries of claim.
19. — Posting notice.
 - (1). In general.
 - (2). Alterations and additions and variations between notice and ground marks.
20. — Marking boundaries on the ground.
 - (1). In general.
 - (2). Alteration or obliteration of boundaries.
 - (3). Placer claims.
 - (4). Mill sites.
21. — Certificate or declaratory statement.
 - (.5). In general.
 - (6). Necessity.
 - (1). Requisites and sufficiency.
 - (2). Variation of description from ground marks.
 - (3). Amended or additional certificates.
 - (4). Conclusiveness.
22. — Record.
23. — Development and improvement.
 - (.5). In general.
 - (1). Necessity and amount.

260. MINES AND MINERALS**I. PUBLIC MINERAL LANDS.(Cont'd)**

- (2). Nature and locus of work and improvements.
- (3). Time of performance.
- (4). Affidavit of work.
- (5). Default in assessment work.
- (5.1). — In general.
- (6). — Default of cotenants or co-locators.
- (7). — Effect of resuming work after default.
- 24. — Abandonment.
- 25. — Forfeiture.
- 26. — Relocation.
- 27. — Conflicting locations.
 - (1). In general.
 - (2). Between lode and tunnel, placer, or mill locations.
 - (3). Default of senior locator.
 - (4). Agreements of parties.
- 28. Rights acquired.
- 29. — In general.
- 29.1. — Nature of property in claims.
- 29.2. — Title by adverse possession.
- 29.3. — Rights in general under valid location.
- 29.4. — Rights under defective location.
 - (1). In general.
 - (2). Estoppel.
- 29.5. — Rights under occupation without location.
- 30. — Right to vein or lode having apex within claim in general.
- 31. — Extralateral rights under vein or lode location.
 - (1). In general.
 - (2). Shape and position of claim.
 - (3). Continuity of vein.
- 32. — Cross or united veins.
- 33. — Veins in tunnel locations.
- 34. Transfer of claims or rights under locations.
- 35. Coal lands.
- 36. Oil and gas lands.
- 37. Saline lands.
- 38. Actions to determine and establish rights.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Rights of action and defenses.

I. PUBLIC MINERAL LANDS.(Cont'd)

- (3). Determination as to citizenship.
- (4). Parties.
- (5). Limitations and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Jurisdiction.
- (7). Injunction and receivers.
- (8). Inspection and view.
- (9). Complaint or bill.
- (9.1). — In general.
- (10). — Allegations as to citizenship or other qualification.
- (11). — Allegations as to possession or ownership and description of property.
- (12). Plea, answer, and demurrer.
- (13). Issues, proof, and variance.
- (14). Presumptions and burden of proof.
- (15). Admissibility and weight of evidence.
- (15.1). — In general.
- (16). — Ownership or possession.
- (17). — Discovery.
- (18). — Extent and position of claim and vein.
- (19). — Marks and monuments.
- (20). — Development and assessment.
- (21). — Abandonment and forfeiture.
- (22). Province of court and jury.
- (23). Instructions.
- (24). Verdict and findings.
- (25). Judgment.
- (25.1). — In general.
- (26). — For defendant or neither party.
- (27). Appeal.
- (28). Costs.

(C) PATENTS.

- 39. Right to patent in general.
- 40. Application, and proceedings thereon.
- 41. Adverse claims, and proceedings thereon.
- 42. Requisites and validity.
- 43. Construction and operation in general.
- 44. Conclusiveness.
- 45. Cancellation.
- 46. Existence and enforcement of trust.

260. MINES AND MINERALS**II. TITLE, CONVEYANCES, AND CONTRACTS.****(A) RIGHTS AND REMEDIES OF OWNERS.**

- 47. Title in general.
- 48. What are minerals and nature of property in minerals.
- 49. Adverse possession.
- 50. Recovery of possession of lands or mines.
- 51. Recovery for trespass or conversion.
 - (1). In general.
 - (2). Form of remedy.
 - (3). Pleading and evidence.
 - (4). Trial.
 - (5). Damages.
- 52. Injunction and receivers.

(B) CONVEYANCES IN GENERAL.

- 53. Options.
- 54. Sales of land with minerals.
 - (.5). In general.
 - (1). Requisites and validity.
 - (2). Construction and operation.
 - (3). Remedies and defenses in general.
 - (4). Fraud and rescission or cancellation.
- 54.5. Mortgages.
- 55. Grants and reservations of minerals and mining rights.
 - (.5). In general.
 - (1). Requisites and validity.
 - (2). Construction and operation in general.
 - (3). Distinction between conveyance or sale and license or lease.
 - (4). Nature of estate granted or reserved.
 - (5). Kind, quantity, and location of minerals granted or reserved.
 - (6). Servitudes granted, retained, or reserved.
 - (7). Conveyance, abandonment, or other termination of rights granted or reserved.
 - (8). Remedies.

(C) LEASES, LICENSES, AND CONTRACTS.**1. IN GENERAL.**

- 56. Nature of mining leases and agreements.
- 57. Agreements for leases.
- 58. Requisites and validity.

II. TITLE, CONVEYANCES, AND CONTRACTS.(Cont'd)

- 59. Modification or rescission.
- 60. Estoppel of lessee to deny title of lessor.

2. CONSTRUCTION AND OPERATION OF MINING LEASES.

- 62. In general.
- 62.1. Premises demised and rights acquired.
- 62.2. Liability for taxes and assessments.
- 63. Term.
- 64. Assignment or sale of lease or reversion.
- 65. Extension or renewal.
- 66. Surrender, abandonment, or forfeiture.
- 67. Eviction.
- 68. Testing or working.
 - (1). In general.
 - (2). Forfeiture for breach.
 - (3). Waiver of forfeiture.
- 69. Improvements.
- 70. Rent or royalties.
 - (1). In general.
 - (2). Amount and time of payment.
 - (3). Rent or royalties dependent on existence of mineral.
 - (4). Forfeiture and re-entry for non-payment.
 - (5). Lien for rent or royalties.
 - (6). Actions.
- 71. Rights and liabilities as to third persons.

3. CONSTRUCTION AND OPERATION OF OIL AND GAS LEASES.

- 73. In general; general rules of construction.
- 73.1. Premises demised and rights acquired.
 - (1). In general.
 - (2). Rights or interests acquired in general.
 - (3). Interest in real estate.
 - (4). Title to oil and gas.
 - (5). Covenants and warranties.
 - (6). Use and enjoyment of premises; surface rights and liabilities.
 - (7). Kind and quantity of minerals.
 - (8). Liability for taxes and assessments.
- 73.2. Construction against lessee or in favor of development.
- 73.5. Term.
- 74. Assignment or sublease.

260. MINES AND MINERALS**II. TITLE, CONVEYANCES, AND
CONTRACTS.(Cont'd)**

- (1). In general.
- (2). Requisites and validity.
- (3). Construction and operation of assignment or sale in general.
- (4). Rights and liabilities as to lessor.
- (5). Rights and liabilities as between assignor and assignee.
- (6). Rights and liabilities as to third persons.
- (7). Construction and operation of sublease.
- (8). Contracts for assignment or sublease.
- (9). Actions.
- (9.1). — In general.
- (10). — Evidence and questions for jury.
- 74.5. Transfer of reversion.
- 75. Extension or renewal.
- 76. Eviction.
- 77. Surrender, abandonment, or forfeiture.
- 78. Testing or working.
- 78.1. — Construction, breach, and penalties.
 - (1). In general.
 - (2). Implied obligation.
 - (3). Payments in lieu; delay rentals, etc.
 - (4). Continuance and extent of development after initial testing.
 - (5). Secondary recovery methods.
 - (6). Depth, number and location of wells.
 - (7). Place or portion developed; pooled or unitized tracts.
 - (8). Extent of production, paying quantities, and marketing.
 - (9). Time for development; commencement, completion, and interruptions.
 - (10). Excuses for delay or failure.
 - (11). Protection against waste or drainage; offset wells.
- 78.2. — Forfeiture for breach in general.
- 78.3. — Demand and notice before forfeiture.
- 78.4. — Exercise of election to forfeit lease.

**II. TITLE, CONVEYANCES, AND
CONTRACTS.(Cont'd)**

- 78.5. — Waiver of forfeiture or breach.
- 78.6. — Operation and effect of forfeiture.
- 78.7. — Actions.
 - (1). In general.
 - (2). Parties and pleading.
 - (3). Evidence.
 - (3.1). — In general.
 - (4). — Weight and sufficiency.
 - (5). Trial.
 - (6). Judgment and relief; damages.
- 78.8. — Other matters.
- 79. Rent or royalties.
- 79.1. — In general.
 - (.5). In general.
 - (1). Rights and liabilities.
 - (2). Nature and distinctions; bonus.
 - (3). Persons entitled in general; apportionment and division orders.
 - (4). Transfer or assignment.
 - (5). Community leases, unitization, or pooling arrangements.
- 79.2. — Rent or royalties dependent on existence of oil or gas.
- 79.3. — Amount and time of payment.
- 79.4. — Mode of payment.
- 79.5. — Furnishing gas or oil to lessor.
- 79.6. — Forfeiture and re-entry for non-payment.
- 79.7. — Actions.
- 80. Improvements.
- 81. Rights and liabilities as to third persons.
- 4. CONSTRUCTION AND OPERATION
OF LICENSES AND CONTRACTS.**
- 83. Rights and liabilities of parties.
- 84. Revocation.
- 85. Contracts to procure title.
- III. OPERATION OF MINES, QUARRIES,
AND WELLS.**
- (A) STATUTORY AND OFFICIAL REGULATIONS.**
- 86. Statutory provisions in general.
- 86.5. Government operation.
- 87. Licenses; severance and production taxes.
- 88. Rights of way.
- 90. Tailings and debris.
- 91. Escape of oil or gas.

260. MINES AND MINERALS**III. OPERATION OF MINES, QUARRIES,
AND WELLS.(Cont'd)**

- 92. Mode of working in general.
- 92.2. Power to regulate.
- 92.3. Validity of statutes.
 - (1). In general.
 - (2). Oil and gas.
- 92.5. Federal law and regulations.
 - (1). In general.
 - (2). Coal mining.
 - (3). Oil and gas.
- 92.8. State law and regulations in general.
- 92.9. Coal mining.
- 92.10. — In general.
- 92.11. — Prosecutions and remedies.
- 92.12. Oil and gas in general.
- 92.13. — In general.
- 92.14. — Waste.
- 92.15. Powers and proceedings of commissions and officers in general.
- 92.16. — In general.
- 92.17. — Procedure in general.
- 92.18. — Examination of books and records.
- 92.19. — Reports.
- 92.20. — Effect of determination, and presumption of validity.
- 92.21. — Judicial review.
- 92.22. Particular modes of regulation in general.
- 92.23. Location, drilling, and spacing rules in general.
 - (1). In general.
 - (2). Validity of spacing rules.
- 92.25. Permits and exceptions as to location.
- 92.26. — In general; confiscation, discrimination and equality.
- 92.27. — Density and pattern of drilling, and drainage.
- 92.28. — Prevention of waste.
- 92.29. — Segregation and subdivision.
- 92.30. — Vested rights.
- 92.31. — Title or boundary in dispute.
- 92.32. Procedure before commissions as to location.
 - (1). In general.
 - (2). Effect of determination; presumption of validity.
- 92.34. Judicial review as to location.
- 92.35. — In general; parties.

**III. OPERATION OF MINES, QUARRIES,
AND WELLS.(Cont'd)**

- 92.36. — Time to sue or appeal.
- 92.37. — Injunction and bond.
- 92.38. — Evidence and fact questions in general.
- 92.39. — Admissibility of evidence and trial de novo.
- 92.40. — Scope of review, and relief granted.
- 92.41. — Effect of judicial review.
- 92.42. Directional wells.
- 92.43. Regulation of production in general.
- 92.44. Methods of production.
 - (1). In general.
 - (2). Gas and use thereof.
 - (3). Salvaging waste or abandoned oil.
 - (4). Use of vacuum.
- 92.48. Amount of production and proration in general.
- 92.49. — In general; waste.
- 92.50. — Common reservoir, and well potential.
- 92.51. — Confiscation, discrimination and equality.
- 92.52. — Density and pattern of drilling, and drainage.
- 92.53. — Economic waste and market demand.
- 92.54. — Gas in general, and gas-oil ratio.
- 92.55. — Marginal wells.
- 92.56. — Shutdown.
- 92.57. — Variations and exceptions.
- 92.58. — Vested rights.
- 92.59. Procedure before commissions, amount of production.
 - (1). In general.
 - (2). Effect of determination; presumption of validity.
- 92.61. Judicial review, amount of production.
- 92.62. — In general; evidence and fact questions.
- 92.63. — Injunction.
- 92.64. — Scope of review and relief granted.
- 92.65. — Effect of judicial review.
- 92.66. Disposition, sale and transportation in general.
- 92.67. — In general.
- 92.68. — Unlawfully produced oil.

260. MINES AND MINERALS**III. OPERATION OF MINES, QUARRIES,
AND WELLS.(Cont'd)**

- 92.69. — Procedure before commissions.
- 92.70. — Judicial review in general.
- 92.71. — Evidence and fact questions.
- 92.72. — Injunction.
- 92.73. Moving trapped waste oil.
- 92.74. — In general; application, information and reports.
- 92.75. — Procedure.
- 92.76. — Judicial review.
- 92.77. — Evidence and fact questions.
- 92.78. Unitization.
- 92.79. — In general; procedure.
- 92.80. — Contribution to expenses by owners of tracts or interests.
- 92.81. Violations of orders, and effect thereof.
- 92.82. — Location.
- 92.83. — Production.
- 92.84. — Remedies in general.
- 92.85. — Confiscation and forfeiture.
- 92.86. — Other matters.
- 93. Mine inspectors.
- 93.5. Sale of products.
- 94. Penalties for violations of regulations.
- 95. Criminal prosecutions.

(B) MINING PARTNERSHIPS AND COMPANIES.

- 96. Partnerships.
- 96.5. — In general.
- 97. — Creation and existence.
- 98. — Partnership property.
- 99. — Rights and liabilities of partners.
 - (1). In general.
 - (2). Rights of partners inter se.
 - (3). Contracts with third persons.
- 100. — Dissolution.
- 101. Associations, joint-stock companies, and other joint enterprises.
- 102. Corporations.
- 102.1. — In general.
- 103. — Incorporation and organization.
- 104. — Members and officers.
- 105. — Franchises and powers.
 - (1). In general.
 - (2). Representation of corporation by officers and agents.
- 106. — Rights and liabilities.

**III. OPERATION OF MINES, QUARRIES,
AND WELLS.(Cont'd)**

- 107. — Dissolution.
- 108. — Foreign corporations.
- (C) RIGHTS AND LIABILITIES
INCIDENT TO WORKING.**
- 109. Contracts for testing or working.
- 110. Actions for labor or materials.
- 111. Liens.
- 111.1. — In general.
- 112. — Nature, grounds, and subject-matter in general.
 - (.5). In general.
 - (1). Construction and operation of statutory provisions in general.
 - (2). Grounds for lien.
 - (3). Property and interests subject to lien.
 - (4). Notice to prevent lien.
- 113. — Right to lien.
- 114. — Proceedings to perfect.
- 114.5. — Amount and extent.
- 115. — Waiver, loss, or discharge.
- 116. — Priority.
- 117. — Enforcement.
- 118. Personal injuries.
- 119. Injuries to animals.
- 120. Injuries to property.
- 121. — In general.
- 122. — Surface soil.
- 123. — Flooding lands and mines.
- 124. — Tailings and debris.
- 125. — Actions.

265. MONOPOLIES**SUBJECTS INCLUDED**

Grants of exclusive or special privileges or immunities in respect of any occupation or business

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Antitrust statutes and regulations, see ANTI-TRUST AND TRADE REGULATION

266. MORTGAGES AND DEEDS OF TRUST

Contracts in restraint of trade or commerce as governed by the common law, see **CONTRACTS**

Corporate and other specific franchises, see **CORPORATIONS AND BUSINESS ORGANIZATIONS, FRANCHISES**, and other specific topics

Inventions, copyrights, and trademarks, exclusive rights under laws relating to, see **PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, TRADEMARKS**

Monopolizing or combining or attempting to monopolize trade or commerce, see **ANTI-TRUST AND TRADE REGULATION**

Privileges and immunities not relating to any occupation or business, grants of, see **CONSTITUTIONAL LAW**

1. Nature and validity in general.
2. Power to grant.
3. Grounds and purposes of grant.
4. Occupations and employments in general.
5. Trade and commerce.
6. Public franchises.
7. Revocation.

**266. MORTGAGES AND
DEEDS OF TRUST**

SUBJECTS INCLUDED

Transfers of real property interests as security for payment of money or performance of obligations, whether made by mortgage, by similarly conditional or defeasible conveyance, by deed of trust, by security deed, or by transaction constituting an equitable mortgage

Nature, requisites, validity, enforceability, scope, operation, and effect of such transfers

Rights, duties, and liabilities of the parties as between themselves and as to others

Liens acquired by such transfers, and priorities as to competing liens and claims

Recording and registration of instruments and documents related to such transfers

Assignment or other transfer of the parties' interests

Enforcement of parties' interests by action or by foreclosure

Redemption

Reverse mortgages

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Adverse possession, mortgages and foreclosures as hostile possession against others, see **ADVERSE POSSESSION** ¶76

Attachment, mortgaged property as subject to, see **CREDITORS' REMEDIES** ¶27

Bankruptcy and bankruptcy law, effect on mortgages, see **BANKRUPTCY**

Cemetery property, power to mortgage, see **CEMETERIES** ¶13

Consumer credit statutes and regulations, operation and effect of, see **FINANCE, BANKING, AND CREDIT** III, XVI

Consumer protection statutes and regulations, operation and effect of, see **ANTITRUST AND TRADE REGULATION** III

Copyright mortgages, see **COPYRIGHTS AND INTELLECTUAL PROPERTY** ¶43

Corporate franchises and property, mortgages of, see also **CORPORATIONS AND BUSINESS ORGANIZATIONS, RAILROADS**, and other specific topics

Easements, rights as against mortgagees of servient tenement, see **EASEMENTS** ¶20

Execution, mortgaged property as subject to, see **EXECUTION** ¶36

Fixtures, rights of mortgagors and mortgagees as to, see **PROPERTY** ¶530

Fraudulent mortgages as to creditors or subsequent purchasers, see **FRAUDULENT CONVEYANCES**

Garnishment, mortgaged property as subject to, see **GARNISHMENT** ¶30

Guaranties of mortgages, see **GUARANTY**

Homestead rights and exemptions, see **HOMESTEAD**

Maritime matters, mortgages involving, see **ADMIRALTY, SHIPPING**

Military members, mortgages involving, see **ARMED SERVICES** ¶34.7

Mines and minerals, mortgages involving, see **MINES AND MINERALS** ¶54.5

266. MORTGAGES AND DEEDS OF TRUST

Particular classes of persons, mortgages by or to, see INFANTS, MARRIAGE AND CO-HABITATION, MENTAL HEALTH, and other specific topics

Personal property, security arrangements concerning, see CHATTEL MORTGAGES, SECURED TRANSACTIONS

Public property, power to mortgage, see COUNTIES, MUNICIPAL CORPORATIONS, and other government topics

Representative or fiduciary capacities, mortgages by persons in, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, TRUSTS

Subrogation to rights of mortgagees, see SUBROGATION

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- I. IN GENERAL, ¶701–710.
 - II. NATURE AND REQUISITES, ¶711–850.
 - (A) IN GENERAL, ¶711–730.
 - (B) FORMAL REQUISITES, ¶731–770.
 - (C) VALIDITY AND ENFORCEABILITY, ¶771–800.
 - (D) CONSIDERATION, ¶801–820.
 - (E) CHARACTERIZATION OF TRANSACTION AS MORTGAGE; EQUITABLE MORTGAGES, ¶821–850.
 - III. CONSTRUCTION IN GENERAL, ¶851–870.
 - IV. PARTIES TO TRANSACTION, ¶871–890.
 - V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES, ¶891–1260.
 - (A) IN GENERAL, ¶891–910.
 - (B) DEBTS OR LIABILITIES SECURED BY TRANSACTION, ¶911–940.
 - (C) PROPERTY SUBJECT TO OR AFFECTED BY TRANSACTION, ¶941–1040.
 - 1. IN GENERAL, ¶941–960.
 - 2. POSSESSION AND CONTROL OF PROPERTY, ¶961–980.
 - 3. USE AND MANAGEMENT OF PROPERTY, ¶981–1000.
 - 4. APPURTENANCES AND IMPROVEMENTS, ¶1001–1020.
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V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES—Cont'd

- (D) DISBURSEMENT AND DISPOSITION OF LOAN PROCEEDS, ¶1041–1050.
- (E) PAYMENT OR PERFORMANCE OF CONDITION, ¶1051–1090.
- (F) RENTS AND PROFITS, ¶1091–1110.
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- (M) RIGHTS, DUTIES, AND LIABILITIES OF LOAN SERVICERS, NOMINEES, AND OTHER AGENTS OF LENDERS, ¶1221–1240.
- (N) FIDUCIARY DUTIES, ¶1241–1260.
- VI. LIEN, ¶1261–1280.
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- VIII. RIGHTS AND CLAIMS OF NON-PARTIES; PRIORITY, ¶1301–1400.
 - (A) IN GENERAL, ¶1301–1320.
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 - (C) PURCHASE MONEY MORTGAGES, PRIORITIES CONCERNING, ¶1351–1360.
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- IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST, ¶1401–1540.
 - (A) IN GENERAL, ¶1401–1430.
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266. MORTGAGES AND DEEDS OF TRUST

- IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST—Cont'd
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- X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST, ☞1541–1620.
- (A) IN GENERAL, ☞1541–1550.
- (B) RIGHTS AND LIABILITIES OF TRANSFEREE, ☞1551–1560.
- (C) ASSUMPTION OF MORTGAGE DEBT BY TRANSFEREE, ☞1561–1580.
- (D) TRANSFER OF PART OF PROPERTY MORTGAGED, ☞1581–1590.
- (E) TRANSFER TO MORTGAGEE, ☞1591–1600.
- (F) EVIDENCE, ☞1601–1610.
- (G) QUESTIONS OF LAW OR FACT, ☞1611–1620.
- XI. REMEDIES AND ENFORCEMENT IN GENERAL, ☞1621–1640.
- XII. ACTIONS AND PROCEEDINGS IN GENERAL, ☞1641–1660.
- XIII. FORECLOSURE, ☞1661–2230.
- (A) IN GENERAL; NATURE, PURPOSE, AND FORM, ☞1661–1680.
- (B) POWER AND RIGHT TO FORECLOSE; GROUNDS, ☞1681–1740.
- (C) PARTIES TO FORECLOSURE; STANDING, ☞1741–1770.
- (D) PROCEEDINGS IN GENERAL, ☞1771–1870.
1. IN GENERAL, ☞1771–1820.
2. JUDGMENT, ORDER, OR DECREE, ☞1821–1850.
3. PROCEEDINGS PRELIMINARY TO NONJUDICIAL FORECLOSURE, ☞1851–1870.
- (E) RESTRAINING FORECLOSURE, ☞1871–1900.

- XIII. FORECLOSURE—Cont'd
- (F) RECEIVERSHIP, ☞1901–1930.
- (G) SALE, ☞1931–2040.
1. IN GENERAL, ☞1931–1960.
2. CONDUCT, TERMS, AND CONDITIONS OF SALE, ☞1961–1980.
3. COMPLETION OF SALE, ☞1981–2000.
4. OPENING, VACATING, OR SETTING ASIDE SALE, ☞2001–2030.
5. RESALE, ☞2031–2040.
- (H) TITLE AND RIGHTS OF PURCHASER, ☞2041–2070.
- (I) DEFICIENCY AND PERSONAL LIABILITY, ☞2071–2100.
- (J) DISPOSITION OF PROCEEDS AND SURPLUS, ☞2101–2120.
- (K) COSTS AND FEES, ☞2121–2150.
- (L) CONCLUSIVENESS, OPERATION, AND EFFECT, ☞2151–2180.
- (M) FORECLOSURE BY ENTRY, POSSESSION, AND NOTICE, ☞2181–2190.
- (N) APPELLATE REVIEW, ☞2191–2230.
- XIV. REDEMPTION, ☞2231–2320.
- (A) IN GENERAL, ☞2231–2280.
- (B) ACTIONS AND PROCEEDINGS, ☞2281–2310.
- (C) CONCLUSIVENESS, OPERATION, AND EFFECT, ☞2311–2320.
- XV. WRONGFUL ENFORCEMENT OR FORECLOSURE, ☞2321–2350.
- XVI. REVERSE MORTGAGES, ☞2351–2362.

I. IN GENERAL.

701. In general.
702. Constitutional and statutory provisions.
703. — In general.
704. — Purpose and construction in general.
705. — Validity.
- (1). In general.
- (2). Recording, registration, lien, and priority.
- (3). Assignment or other transfer of parties' interests.
- (4). Remedies and enforcement; foreclosure.
- (5). Redemption.
- (6). Reverse mortgages.
706. — Retroactive or prospective operation.
- (1). In general.

266. MORTGAGES AND DEEDS OF TRUST**I. IN GENERAL.**(Cont'd)

- (2). Recording, registration, lien, and priority.
- (3). Assignment or other transfer of parties' interests.
- (4). Remedies and enforcement; foreclosure.
- (5). Redemption.
- (6). Reverse mortgages.
- 707. What law governs.
- 708. Federal preemption.

II. NATURE AND REQUISITES.**(A) IN GENERAL.**

- 711. In general.
- 712. Deeds of trust in general.
- 713. Security deeds in general.
- 714. Purchase money mortgages, deeds of trust, or security deeds.
- 715. Existence and necessity of debt.
- 716. — In general.
- 717. — Effect of extinguishment of debt.
- 718. Negotiability.
- 719. Evidence.
- 720. — In general; admissibility.
- 721. — Presumptions and burden of proof.
- 722. — Weight and sufficiency.
- 723. Questions of law or fact.

(B) FORMAL REQUISITES.

- 731. In general.
- 732. Form of instrument.
- 733. Necessity and sufficiency of writing in general.
- 734. Recitals.
- 735. — In general.
- 736. — As to security.
- 737. — As to consideration.
- 738. — Words of conveyance.
- 739. — Covenant or promise to pay; manner of payment or defeasance.
- 740. Execution in general.
- 741. Signature or subscription of parties.
- 742. — In general.
- 743. — Forged signatures.
- 744. Seal.
- 745. Attestation, acknowledgment, or notarization.
- 746. Affixing revenue stamps.

II. NATURE AND REQUISITES.(Cont'd)

- 747. Affidavits accompanying instrument.
- 748. — In general.
- 749. — Consideration.
- 750. — Disbursement.
- 751. — Good faith.
- 752. Partial or defective execution.
- 753. — In general.
- 754. — Execution in blank.
- 755. — Confirmation or ratification of defective instrument.
 - (1). In general.
 - (2). Forged instruments.
- 756. Delivery.
- 757. — In general.
- 758. — Recording or delivery for recording.
- 759. — Conditional delivery.
- 760. Ratification of unauthorized or defective delivery.
- 761. Acceptance of delivery.
- 762. Evidence.
- 763. — In general; admissibility.
- 764. — Presumptions and burden of proof.
- 765. — Weight and sufficiency.
- 766. Questions of law or fact.

(C) VALIDITY AND ENFORCEABILITY.

- 771. In general.
- 772. Validity of underlying obligation.
- 773. Unconscionability.
- 774. Illegality.
- 775. Capacity and assent of parties.
- 776. — In general.
- 777. — Physical or mental condition of party.
- 778. — Trustee's consent.
- 779. Mistake.
- 780. Fraud and misrepresentation.
- 781. Duress.
- 782. Undue influence.
- 783. Partial invalidity.
- 784. Ratification of voidable mortgage.
- 785. Evidence.
- 786. — In general; admissibility.
- 787. — Presumptions and burden of proof.
- 788. — Weight and sufficiency.
 - (1). In general.
 - (2). Degree of proof.

266. MORTGAGES AND DEEDS OF TRUST**II. NATURE AND REQUISITES.**(Cont'd)

(3). Particular cases.

789. Questions of law or fact.

(D) CONSIDERATION.

801. In general.

802. Sufficiency in general.

803. Pre-existing debt or liability; surrender or release of other security.

804. Compromise or settlement of disputed claim.

805. Failure of consideration.

806. Evidence.

807. — In general; admissibility.

808. — Presumptions and burden of proof.

809. — Weight and sufficiency.

810. Questions of law or fact.

(E) CHARACTERIZATION OF TRANSACTION AS MORTGAGE; EQUITABLE MORTGAGES.

821. In general.

822. Intention of parties in general.

823. Factors and circumstances considered in general.

824. Sales, deeds, and conveyances in general.

825. — In general.

826. — Absolute sales, deeds, and conveyances in general.

827. — Effect of other agreements in general.

828. — Defeasance in general.

829. — Particular cases.

830. Conditional sales, contracts for deed, and installment land contracts.

831. Leases.

832. Defective, failed, invalid, or informal mortgages.

833. Fraud or other inequitable conduct.

834. Other particular cases and transactions.

835. Evidence.

836. — In general; admissibility.

837. — Presumptions and burden of proof.

838. — Weight and sufficiency.

(1). In general.

(2). Degree of proof.

(3). Particular cases.

839. Questions of law or fact.

III. CONSTRUCTION IN GENERAL

851. In general.

III. CONSTRUCTION IN GENERAL.(Cont'd)

852. Intention of parties in general.

853. Language of instrument.

854. — In general.

855. — Construction against drafter.

856. — Plain meaning; ambiguity.

857. — Conflicting clauses; general and specific provisions.

858. Construing instruments together.

859. Previous negotiations and contracts.

860. Extrinsic circumstances.

861. Evidence.

862. — In general; admissibility.

863. — Presumptions and burden of proof.

864. — Weight and sufficiency.

865. Questions of law or fact.

IV. PARTIES TO TRANSACTION.

871. In general.

872. Description of parties in general.

873. Parties liable.

874. Parties secured.

875. Deeds of trust and security deeds.

876. — In general.

877. — Trustees.

(1). In general.

(2). Removal; appointment of new or substitute trustee.

878. Loan servicers, nominees, and other agents of lenders.

879. Other particular parties.

880. Evidence.

881. — In general; admissibility.

882. — Presumptions and burden of proof.

883. — Weight and sufficiency.

884. Questions of law or fact.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.**(A) IN GENERAL.**

891. In general.

892. Nature of interest conveyed or created; title or lien.

893. Equitable mortgages.

894. Deeds of trust.

895. Security deeds.

896. Time and place of taking effect.

897. Duration and termination in general.

266. MORTGAGES AND DEEDS OF TRUST**V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)**

- 898. Performance, breach, and default in general.
- 899. Evidence.
- 900. — In general; admissibility.
- 901. — Presumptions and burden of proof.
- 902. — Weight and sufficiency.
- 903. Questions of law or fact.

(B) DEBTS OR LIABILITIES SECURED BY TRANSACTION.

- 911. In general.
- 912. Description of debts or liabilities secured in general.
- 913. Debts owed by another.
- 914. Purchase money.
- 915. Performance of contract or obligation.
- 916. Mortgages for support.
- 917. Indemnity mortgages.
- 918. Mortgages as security; collateral mortgages.
- 919. Extension to other debts or liabilities.
- 920. — In general.
- 921. — Future advances; dragnet and cross-collateralization clauses.
- 922. Interest.
- 923. Personal liability for indebtedness secured.
- 924. — In general.
- 925. — Recourse or nonrecourse.
- 926. Evidence.
- 927. — In general; admissibility.
- 928. — Presumptions and burden of proof.
- 929. — Weight and sufficiency.
- 930. Questions of law or fact.

(C) PROPERTY SUBJECT TO OR AFFECTED BY TRANSACTION.**1. IN GENERAL.**

- 941. In general.
- 942. Ownership, estate, or interest in property.
- 943. — In general.
- 944. — Vested, contingent, and future interests.
- 945. — Interests under land contracts.
- 946. Description of property.
- 947. — In general.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 948. — Particular descriptions.
- 949. Extension to or substitution of other property.
- 950. — In general.
- 951. — Proceeds of property.
- 952. — After-acquired property.
- 953. Acquisition of outstanding title or claim.
- 954. Evidence.
- 955. — In general; admissibility.
- 956. — Presumptions and burden of proof.
- 957. — Weight and sufficiency.
- 958. Questions of law or fact.

2. POSSESSION AND CONTROL OF PROPERTY.

- 961. In general.
- 962. Rights and duties of mortgagee.
- 963. — In general.
- 964. — After default.
- 965. Adverse possession.
- 966. Evidence.
- 967. — In general; admissibility.
- 968. — Presumptions and burden of proof.
- 969. — Weight and sufficiency.
- 970. Questions of law or fact.

3. USE AND MANAGEMENT OF PROPERTY.

- 981. In general.
- 982. Rights and duties of mortgagee.
- 983. — In general.
- 984. — After default.
- 985. Expenses, maintenance, and repairs.
- 986. Evidence.
- 987. — In general; admissibility.
- 988. — Presumptions and burden of proof.
- 989. — Weight and sufficiency.
- 990. Questions of law or fact.

4. APPURTENANCES AND IMPROVEMENTS.

- 1001. In general.
- 1002. Buildings and structures.
- 1003. Mobile or manufactured homes.
- 1004. Logs, timber, and crops.
- 1005. Evidence.
- 1006. — In general; admissibility.
- 1007. — Presumptions and burden of proof.

266. MORTGAGES AND DEEDS OF TRUST**V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)**

1008. — Weight and sufficiency.
 1009. Questions of law or fact.

5. INJURIES TO PROPERTY.

1021. In general.
 1022. Waste.
 1023. Trespass.
 1024. — In general.
 1025. — By mortgagee.
 1026. Injuries by third parties.
 1027. — In general.
 1028. — Trespass.
 1029. Evidence.
 1030. — In general; admissibility.
 1031. — Presumptions and burden of proof.
 1032. — Weight and sufficiency.
 1033. Questions of law or fact.

(D) DISBURSEMENT AND DISPOSITION OF LOAN PROCEEDS.

1041. In general.
 1042. Construction loans.
 1043. Evidence.
 1044. — In general; admissibility.
 1045. — Presumptions and burden of proof.
 1046. — Weight and sufficiency.
 1047. Questions of law or fact.

(E) PAYMENT OR PERFORMANCE OF CONDITION.

1051. In general.
 1052. Particular cases, contexts, and questions in general.
 1053. Time for payment or performance.
 1054. — In general.
 1055. — Acceleration.
 1056. Wrap-around mortgages.
 1057. Partial payments and suspense accounts.
 1058. Payoff statements.
 1059. Application of payments in general.
 1060. Fees and miscellaneous charges.
 1061. — In general.
 1062. — Late charges or fees; default interest.
 1063. — Payoff fees in general.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

1064. Prepayment, defeasance, or curtailment.
 1065. — In general.
 1066. — Perfect tender in time rule.
 1067. — Penalties, premiums, and defeasance fees.
 1068. Persons or entities to whom payment may be made.
 1069. What constitutes payment or tender.
 1070. — In general.
 1071. — Coupons.
 1072. — Bonds.
 1073. — Checks.
 1074. — Online payments; electronic fund transfers.
 1075. — Setoff or offset against indebtedness.
 1076. — Insurance payments.
 1077. — Property transfers.
 1078. Operation and effect of payment or tender.
 1079. — In general.
 1080. — Extinguishment or discharge of mortgage lien or debt.
 1081. Conditional tender.
 1082. Rights of third persons making or agreeing to make payment or satisfaction.
 1083. Evidence.
 1084. — In general; admissibility.
 1085. — Presumptions and burden of proof.
 1086. — Weight and sufficiency.
 1087. Questions of law or fact.

(F) RENTS AND PROFITS.

1091. In general.
 1092. Provisions of mortgage or other agreement.
 1093. — In general.
 1094. — Particular cases.
 1095. After default; mortgagee in possession.
 1096. — In general.
 1097. — Particular cases.
 1098. Accounting.
 1099. Application to debt or interest.

266. MORTGAGES AND DEEDS OF TRUST**V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.**(Cont'd)

- 1100. Rights and liabilities as between different mortgagees.
- 1101. Evidence.
- 1102. — In general; admissibility.
- 1103. — Presumptions and burden of proof.
- 1104. — Weight and sufficiency.
- 1105. Questions of law or fact.

(G) TAXES AND ASSESSMENTS.

- 1111. In general.
- 1112. Provisions of mortgage or other agreement.
- 1113. Good faith and fair dealing.
- 1114. Reimbursement of mortgagee.
- 1115. Evidence.
- 1116. — In general; admissibility.
- 1117. — Presumptions and burden of proof.
- 1118. — Weight and sufficiency.
- 1119. Questions of law or fact.

(H) INSURANCE.

- 1121. In general.
- 1122. Provisions of mortgage or other agreement.
- 1123. Good faith and fair dealing.
- 1124. Reimbursement of mortgagee.
- 1125. Evidence.
- 1126. — In general; admissibility.
- 1127. — Presumptions and burden of proof.
- 1128. — Weight and sufficiency.
- 1129. Questions of law or fact.

(I) MODIFICATION.

- 1131. In general.
- 1132. Modification agreements in general.
- 1133. Particular cases, contexts, and questions in general.
- 1134. Debt or obligation secured by transaction.
- 1135. — In general.
- 1136. — Amount.
- 1137. — Time or mode of payment.
- 1138. — Renewal of note or obligation.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1139. Property subject to or affected by transaction.
- 1140. — In general.
- 1141. — Adding, subtracting, or substituting property.
- 1142. Refinancing.
- 1143. Forbearance.
- 1144. Loss mitigation; duty to pursue foreclosure alternatives.
- 1145. Dual-tracking.
- 1146. Federal regulation.
- 1147. Evidence.
- 1148. — In general; admissibility.
- 1149. — Presumptions and burden of proof.
- 1150. — Weight and sufficiency.
- 1151. Questions of law or fact.

(J) RELEASE, CANCELLATION, DISCHARGE, AND SATISFACTION.

- 1161. In general.
- 1162. Authority to grant, provide, or accept.
- 1163. Form and requisites.
- 1164. — In general.
- 1165. — Consideration.
- 1166. — Reconveyance.
- 1167. Validity and enforceability.
- 1168. Partial release.
- 1169. Execution, delivery, and entry of record.
- 1170. Construction, operation, and effect.
- 1171. — In general.
- 1172. — Partial release.
- 1173. Reinstatement of mortgage.
- 1174. Reissue of note or mortgage.
- 1175. Evidence.
- 1176. — In general; admissibility.
- 1177. — Presumptions and burden of proof.
- 1178. — Weight and sufficiency.
- 1179. Questions of law or fact.

(K) OTHER TRANSACTIONS AND DEALINGS BETWEEN PARTIES.

- 1181. In general.
- 1182. Rescission.
- 1183. Negligence.

266. MORTGAGES AND DEEDS OF TRUST**V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.**(Cont'd)

- 1184. Fraud and misrepresentation.
- 1185. Conversion and civil theft.
- 1186. Evidence.
- 1187. — In general; admissibility.
- 1188. — Presumptions and burden of proof.
- 1189. — Weight and sufficiency.
- 1190. Questions of law or fact.

(L) RIGHTS, DUTIES, AND LIABILITIES OF TRUSTEES.

- 1201. In general.
- 1202. Parties to whom duties are owed.
- 1203. Conduct and misconduct; negligence.
- 1204. — In general.
- 1205. — Particular cases.
- 1206. Good faith, bad faith, and gross negligence.
- 1207. Fees and expenses.
- 1208. Liability of lender or other beneficiary for acts of trustee.
- 1209. Evidence.
- 1210. — In general; admissibility.
- 1211. — Presumptions and burden of proof.
- 1212. — Weight and sufficiency.
- 1213. Questions of law or fact.

(M) RIGHTS, DUTIES, AND LIABILITIES OF LOAN SERVICERS, NOMINEES, AND OTHER AGENTS OF LENDERS.

- 1221. In general.
- 1222. Parties to whom duties are owed.
- 1223. Conduct and misconduct; negligence.
- 1224. — In general.
- 1225. — Particular cases.
- 1226. Good faith, bad faith, and gross negligence.
- 1227. Fees and expenses.
- 1228. Liability of lender for acts of agent.
- 1229. Evidence.
- 1230. — In general; admissibility.
- 1231. — Presumptions and burden of proof.
- 1232. — Weight and sufficiency.
- 1233. Questions of law or fact.

(N) FIDUCIARY DUTIES.

- 1241. In general.
- 1242. Lenders and mortgagees in general.
- 1243. Deeds of trust and security deeds.
- 1244. — In general.
- 1245. — Lenders; beneficiaries.
- 1246. — Trustees.
- 1247. Loan servicers, nominees, and other agents of lenders.
- 1248. Evidence.
- 1249. — In general; admissibility.
- 1250. — Presumptions and burden of proof.
- 1251. — Weight and sufficiency.
- 1252. Questions of law or fact.

VI. LIEN.

- 1261. In general; nature, creation, and existence.
- 1262. Commencement and duration.
- 1263. Scope and extent.
- 1264. Termination.
- 1265. — In general.
- 1266. — Waiver or abandonment.
- 1267. Renewal or restoration.
- 1268. Evidence.
- 1269. — In general; admissibility.
- 1270. — Presumptions and burden of proof.
- 1271. — Weight and sufficiency.
- 1272. Questions of law or fact.

VII. RECORDING AND REGISTRATION.

- 1281. In general.
- 1282. Necessity and effect as between parties to transaction.
- 1283. — In general.
- 1284. — Effect of failure to record as between parties to transaction.
- 1285. Instruments or documents subject to recording or registration.
- 1286. — In general.
- 1287. — Transactions characterized as mortgages; equitable mortgages.
- 1288. Place.
- 1289. Time.
- 1290. Fees.
- 1291. Sufficiency.
- 1292. Renewal or reinscription.

266. MORTGAGES AND DEEDS OF TRUST**VII. RECORDING AND
REGISTRATION.(Cont'd)**

- 1293. Evidence.
- 1294. — In general; admissibility.
- 1295. — Presumptions and burden of proof.
- 1296. — Weight and sufficiency.
- 1297. Questions of law or fact.

**VIII. RIGHTS AND CLAIMS OF
NONPARTIES; PRIORITY.****(A) IN GENERAL.**

- 1301. In general.
- 1302. Record and notice, effect on nonparties in general.
- 1303. Failure to record, effect on nonparties in general.
- 1304. Mortgagee as good-faith purchaser in general.
- 1305. Actual notice.
- 1306. Constructive or inquiry notice.
- 1307. Possession as notice.
- 1308. Defective instruments or instruments not entitled to be recorded.
- 1309. Transactions characterized as mortgages; equitable mortgages.
- 1310. Evidence.
- 1311. — In general; admissibility.
- 1312. — Presumptions and burden of proof.
- 1313. — Weight and sufficiency.
- 1314. Questions of law or fact.

**(B) PARTICULAR COMPETING CLAIMS AND
LIENS, PRIORITIES CONCERNING.**

- 1321. In general.
- 1322. Debts or obligations secured by same mortgage or deed.
- 1323. Multiple mortgages, deeds of trust, or security deeds.
- 1324. — In general.
- 1325. — Record and notice of mortgage.
 - (1). In general.
 - (2). Instruments recorded at same time.
- 1326. Judicial proceedings.
- 1327. — In general.
- 1328. — Record and notice of mortgage.
- 1329. Building and construction; mechanics' liens.

**VIII. RIGHTS AND CLAIMS OF NONPARTIES;
PRIORITY.(Cont'd)**

- 1330. — In general.
- 1331. — Record and notice of mortgage.
- 1332. Minerals; oil and gas.
- 1333. Vendor and purchaser.
- 1334. Landlord and tenant; lessor and lessee.
- 1335. Condominium; common interest communities.
- 1336. Heirs and survivors.
- 1337. Government claims and liens.
- 1338. — In general.
- 1339. — Tax claims and liens.
- 1340. Evidence.
- 1341. — In general; admissibility.
- 1342. — Presumptions and burden of proof.
- 1343. — Weight and sufficiency.
- 1344. Questions of law or fact.

**(C) PURCHASE MONEY MORTGAGES,
PRIORITIES CONCERNING.**

- 1351. In general.
- 1352. Particular liens and claims.
- 1353. Evidence.
- 1354. — In general; admissibility.
- 1355. — Presumptions and burden of proof.
- 1356. — Weight and sufficiency.
- 1357. Questions of law or fact.

(D) AGREEMENTS AS TO PRIORITY.

- 1361. In general.
- 1362. Subordination agreements.
- 1363. Effect on nonparties.
- 1364. Evidence.
- 1365. — In general; admissibility.
- 1366. — Presumptions and burden of proof.
- 1367. — Weight and sufficiency.
- 1368. Questions of law or fact.

**(E) EFFECT OF SUBSEQUENT CIRCUMSTANCES
AND TRANSACTIONS.**

- 1371. In general.
- 1372. Modification of loan or mortgage in general.
- 1373. Subsequent or future advances.
- 1374. Consolidation of mortgages or loans.
- 1375. Renewals or extensions.

266. MORTGAGES AND DEEDS OF TRUST**VIII. RIGHTS AND CLAIMS OF NONPARTIES;
PRIORITY.(Cont'd)**

- 1376. Refinancing, satisfaction, release, or discharge of mortgage.
- 1377. Assignment of mortgage to mortgagor.
- 1378. Conveyance of mortgaged property to mortgagee.
- 1379. Evidence.
- 1380. — In general; admissibility.
- 1381. — Presumptions and burden of proof.
- 1382. — Weight and sufficiency.
- 1383. Questions of law or fact.

**(F) EFFECT OF PARTIES' CONDUCT
OR MISCONDUCT.**

- 1391. In general.
- 1392. Negligence.
- 1393. Fraud and misrepresentation.
- 1394. Waiver, estoppel, and consent.
- 1395. Evidence.
- 1396. — In general; admissibility.
- 1397. — Presumptions and burden of proof.
- 1398. — Weight and sufficiency.
- 1399. Questions of law or fact.

**IX. ASSIGNMENT OR OTHER TRANSFER
OF MORTGAGEE'S INTEREST.****(A) IN GENERAL.**

- 1401. In general.
- 1402. Assignability or transferability.
- 1403. Form and requisites.
- 1404. — In general.
- 1405. — Particular transfers in general.
- 1406. — Delivery.
- 1407. — Acknowledgment.
- 1408. — Indorsement.
- 1409. Validity and enforceability.
- 1410. Necessity of writing.
- 1411. Necessity of transferring both mortgage and note.
- 1412. — In general.
- 1413. — Bifurcation of mortgage and note.
- 1414. — Mortgage as following note; note as following mortgage.
- 1415. — Effect of failure to transfer both.
- 1416. Consideration.
- 1417. Parties to transfer.
- 1418. — In general.

**IX. ASSIGNMENT OR OTHER TRANSFER OF
MORTGAGEE'S INTEREST.(Cont'd)**

- 1419. — Who may make transfer.
- 1420. — Who may receive transfer.
- 1421. Notice to or consent of mortgagor.
- 1422. Recording and registration.
- 1423. — In general.
- 1424. — Necessity.
- 1425. — Mode and sufficiency.

**(B) CONSTRUCTION, OPERATION,
AND EFFECT OF TRANSFER.**

- 1431. In general.
- 1432. Particular transfers in general.
- 1433. Title and rights transferred.
- 1434. Equities and defenses between original parties, transfer as subject to.
- 1435. — In general.
- 1436. — Bona fide transferees of mortgage.
- 1437. — Bona fide purchasers of negotiable instruments secured by mortgage.
- 1438. Equities in favor of third persons, transfer as subject to.
- 1439. Rights and liabilities of transferor.
- 1440. Rights of transferee.
- 1441. — In general.
- 1442. — As to property mortgaged.
- 1443. — As to debt or obligation secured.
- 1444. — As against transferor.
 - (1). In general.
 - (2). Right of recourse in general.
 - (3). Covenants and warranties in general.
 - (4). Implied covenants and warranties.
- 1445. — As against third persons.
- 1446. Liabilities of transferee.
- 1447. — In general.
- 1448. — Acts, practices, or conduct of transferor.
- 1449. Payment or release of debt.
- 1450. — In general.
- 1451. — Payment to mortgagee after transfer.
- 1452. Release, cancellation, discharge, or satisfaction of mortgage after transfer.
- 1453. Priorities.
- 1454. — In general.
- 1455. — Priority of record.
- 1456. — Effect of failure to record.

266. MORTGAGES AND DEEDS OF TRUST**(C) TRANSFER OF PART OF DEBT.**

- 1461. In general.
- 1462. Construction, operation, and effect.

(D) TRANSFERS INVOLVING SERVICING RIGHTS, PARTICIPATION ARRANGEMENTS, POOLING, OR SECURITIZATION.

- 1471. In general.
- 1472. Form and requisites.
- 1473. Validity and enforceability.
- 1474. Consideration.
- 1475. Parties to transfer.
- 1476. Notice to or consent of mortgagor.
- 1477. Recording and registration.
- 1478. Construction, operation, and effect of transfer.
- 1479. — In general.
- 1480. — Participation arrangements.
- 1481. — Pooling and securitization.

(E) RETRANSFER.

- 1491. In general.
- 1492. Reassignment.
- 1493. Rights and liabilities of subsequent or remote transferees.

(F) EQUITABLE TRANSFER.

- 1501. In general.
- 1502. Equitable assignment.

(G) TRANSFER TO MORTGAGOR OR PROPERTY OWNER.

- 1511. In general.
- 1512. Merger, confusion, and extinguishment.
- 1513. Reissue or reassignment.

(H) EVIDENCE.

- 1521. In general; admissibility.
- 1522. Presumptions and burden of proof.
- 1523. Weight and sufficiency.

(I) QUESTIONS OF LAW OR FACT.

- 1531. In general.

X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST.**(A) IN GENERAL.**

- 1541. In general.
- 1542. Right to sell or convey in general.
- 1543. Notice to or consent of mortgagee.

X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST.(Cont'd)

- 1544. Liabilities of mortgagor on transfer.
- 1545. Due-on-sale clauses.
- 1546. Short sales.

(B) RIGHTS AND LIABILITIES OF TRANSFEE.

- 1551. In general.
- 1552. Title.
- 1553. Conveyance as subject to mortgage.
- 1554. Right to contest mortgage.
- 1555. Liabilities of transferee.
- 1556. — In general.
- 1557. — To mortgagor.
- 1558. — For mortgage debt.
- 1559. Subsequent or remote transferees.

(C) ASSUMPTION OF MORTGAGE DEBT BY TRANSFEE.

- 1561. In general.
- 1562. Assumption agreements.
- 1563. — In general.
- 1564. — Form and requisites.
- 1565. — Consideration.
- 1566. — Validity and enforceability.
- 1567. — Construction in general.
- 1568. Operation and effect of assumption.
- 1569. — In general.
- 1570. — Personal liability of transferee.
- 1571. — Transferee as principal; mortgagor as surety.
- 1572. — Release or discharge of mortgagor.
- 1573. — Effect of extension of time or other modification.
- 1574. Mutual rights and liabilities of mortgagor and transferee.
- 1575. — In general.
- 1576. — Release of transferee by mortgagor.

(D) TRANSFER OF PART OF PROPERTY MORTGAGED.

- 1581. In general.
- 1582. Apportionment of mortgage.
- 1583. Subjection of separate portions to mortgage.
- 1584. Subjection to mortgage in inverse order of alienation.

266. MORTGAGES AND DEEDS OF TRUST**(E) TRANSFER TO MORTGAGEE.**

- 1591. In general.
- 1592. Deeds in lieu of foreclosure in general.
- 1593. Merger, confusion, and extinguishment.
- 1594. — In general.
- 1595. — Intent of parties.
- 1596. — Existence of other liens.

(F) EVIDENCE.

- 1601. In general; admissibility.
- 1602. Presumptions and burden of proof.
- 1603. Weight and sufficiency.

(G) QUESTIONS OF LAW OR FACT.

- 1611. In general.

**XI. REMEDIES AND ENFORCEMENT
IN GENERAL.**

- 1621. In general.
- 1622. Lender or mortgagee, remedies of and enforcement by.
- 1623. — In general.
- 1624. — Exclusive, concurrent, and conflicting remedies; election.
 - (1). In general.
 - (2). Foreclosure and other remedies.
 - (3). Multiple foreclosure remedies.
 - (4). “One action” and “security first” rules.
- 1625. Borrower or mortgagor, remedies of and enforcement by.
- 1626. — In general.
- 1627. — Exclusive, concurrent, and conflicting remedies; election.
- 1628. Other particular parties, remedies of and enforcement by.
- 1629. — In general.
- 1630. — Trustees.
- 1631. — Transferees of mortgagee’s interest.
- 1632. — Transferees of mortgagor’s interest.
- 1633. — Purchasers at foreclosure sales.
- 1634. Waiver, estoppel, and consent.
- 1635. Compromise, settlement, and release.

**XII. ACTIONS AND PROCEEDINGS
IN GENERAL.**

- 1641. In general.
- 1642. Conditions precedent.

**XII. ACTIONS AND PROCEEDINGS
IN GENERAL.(Cont’d)**

- 1643. Jurisdiction and venue.
- 1644. Time for proceedings; limitations and laches.
- 1645. Persons entitled to sue; standing; parties.
- 1646. Pleading.
- 1647. Evidence in general.
- 1648. — In general; admissibility.
- 1649. — Presumptions and burden of proof.
- 1650. — Weight and sufficiency.
- 1651. Trial or hearing.
- 1652. — In general.
- 1653. — Questions of law or fact in general.
- 1654. — Instructions.
- 1655. — Verdict, findings, and conclusions.
- 1656. Damages or other relief.
- 1657. Judgment, order, or decree.
- 1658. Costs and fees.

XIII. FORECLOSURE.**(A) IN GENERAL; NATURE, PURPOSE, AND FORM.**

- 1661. In general.
- 1662. Judicial foreclosure.
- 1663. — In general.
- 1664. — Foreclosure by action in general.
- 1665. — Law or equity; hybrid nature.
- 1666. — In personam or in rem.
- 1667. — Scire facias sur mortgage.
- 1668. — Proceedings by rule nisi and judgment thereon or for summary foreclosure.
- 1669. — Executory process.
- 1670. Nonjudicial foreclosure.
- 1671. — In general.
- 1672. — Foreclosure by exercise of power of sale.
- 1673. — Foreclosure by advertisement.
- 1674. Strict foreclosure.

**(B) POWER AND RIGHT TO FORECLOSE;
GROUNDS.**

- 1681. In general.
- 1682. Judicial foreclosure in general.
- 1683. Nonjudicial foreclosure in general.
- 1684. — In general.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 1685. — Existence and validity of power of sale.
- 1686. — Revocation or suspension of power of sale.
- 1687. Maturity of debt secured.
- 1688. Default or breach of condition.
- 1689. — In general.
- 1690. — Particular obligations and conditions in general.
- 1691. — Default in payment in general.
- 1692. — Effect of extension of time for payment.
- 1693. — Installments.
- 1694. — Fees and charges.
- 1695. — Interest.
- 1696. — Rent, taxes, and assessments.
- 1697. — Insurance.
- 1698. — Different obligations secured by same mortgage; dragnet clauses.
- 1699. — Granting additional liens or encumbrances on mortgaged property.
- 1700. — Acceleration.
 - (1). In general.
 - (2). Election to accelerate.
 - (3). Defaults triggering acceleration.
 - (4). Validity.
 - (5). Tender of payment after acceleration.
 - (6). Abandonment of acceleration; deacceleration.
- 1701. Defenses to foreclosure.
- 1702. — In general.
- 1703. — Stipulations against forfeiture or foreclosure.
- 1704. — Failure of consideration.
- 1705. — Substantial performance; payment.
- 1706. — Good faith and fair dealing.
- 1707. — Existence of land patent.
- 1708. — Equity.
- 1709. — Release or discharge.
- 1710. — Recoupment, set-off, or counterclaim.
- 1711. — Purchase money mortgages.
- 1712. Reinstatement; curing default.
- 1713. Conditions precedent.
- 1714. — In general.
- 1715. — Ownership of mortgage.

XIII. FORECLOSURE.(Cont'd)

- 1716. — Recording of mortgage or assignment.
- 1717. — Holding, producing, or presenting loan documents.
- 1718. — Investigation as to legality of foreclosure.
- 1719. Required notices.
- 1720. — In general.
- 1721. — Default.
- 1722. — Intent to foreclose.
- 1723. — Acceleration, reinstatement, and curing default.
- 1724. Service of required notices.
- 1725. Duty to pursue foreclosure alternatives.
- 1726. Alternative dispute resolution; mediation.
- 1727. — In general.
- 1728. — Judicial review.
- 1729. — Sanctions for failure to comply.
- 1730. Settlement or foreclosure conferences.
- 1731. — In general.
- 1732. — Sanctions.
- 1733. Compelling foreclosure.
- 1734. Rights of junior lienholders.
- 1735. Successive foreclosures.
- 1736. Waiver, estoppel, and consent.

(C) PARTIES TO FORECLOSURE; STANDING.

- 1741. In general.
- 1742. Persons entitled to foreclose; plaintiffs.
- 1743. — In general.
- 1744. — Lenders and mortgagees in general.
- 1745. — Parties to deeds of trust and security deeds.
 - (1). In general.
 - (2). Lenders; beneficiaries.
 - (3). Trustees.
- 1746. — Loan servicers, nominees, and other agents of lenders.
- 1747. — Attorneys or attorneys-in-fact.
- 1748. — Assignees and other transferees.
- 1749. — Holders of obligations secured and their agents; non-holders in possession.
- 1750. — Holders of lost instruments.
- 1751. Persons as to whom mortgage may be foreclosed; defendants.
- 1752. Necessary or indispensable parties.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 1753. — In general.
- 1754. — Lenders and mortgagees in general.
- 1755. — Parties to deeds of trust and security deeds.
 - (1). In general.
 - (2). Lenders; beneficiaries.
 - (3). Trustees.
- 1756. — Loan servicers, nominees, and other agents of lenders.
- 1757. — Assignees and other transferees.
 - (1). In general.
 - (2). Tax-sale purchasers.
- 1758. — Tenants.
- 1759. — Heirs and survivors.
- 1760. — Other lenders, mortgagees, and lienholders.
- 1761. Bringing in new parties.
- 1762. — In general.
- 1763. — Third-party defendants.
- 1764. Intervention.
- 1765. Substitution of parties.
- 1766. Defects, objections, and amendment as to parties.

(D) PROCEEDINGS IN GENERAL.**1. IN GENERAL.**

- 1771. In general.
- 1772. Abatement or stay on death of party.
- 1773. Jurisdiction.
- 1774. — In general.
- 1775. — Subject-matter jurisdiction.
- 1776. — Personal jurisdiction.
- 1777. Venue.
- 1778. Time for proceedings; limitations and laches.
- 1779. Process.
- 1780. — In general.
- 1781. — Mode and sufficiency of service.
- 1782. Pleading.
- 1783. — In general.
- 1784. — Complaint or other initial pleading.
 - (1). In general.
 - (2). Particular cases.
- 1785. — Answer or other responsive pleading.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Particular cases.
- 1786. — Subsequent pleadings.
 - (1). In general.
 - (2). Particular cases.
- 1787. — Amended and supplemental pleadings.
 - (1). In general.
 - (2). Particular cases.
- 1788. — Variance between pleadings and proof.
 - (1). In general.
 - (2). Particular cases.
- 1789. Evidence in general.
- 1790. — In general; admissibility.
- 1791. — Presumptions and burden of proof.
- 1792. — Weight and sufficiency.
- 1793. Trial or hearing in general.
- 1794. Scope of inquiry and powers of court.
- 1795. Stay or continuance.
- 1796. Consolidation or severance.
- 1797. Dismissal or nonsuit.
- 1798. — In general; grounds.
- 1799. — Voluntary dismissal.
- 1800. — Effect of dismissal.
- 1801. Reference.
- 1802. — In general.
- 1803. — Proceedings to obtain.
- 1804. — Proceedings on reference.
- 1805. — Review or supervision by trial court.
- 1806. Questions of law or fact in general.
- 1807. Instructions.
- 1808. Verdict, findings, and conclusions.
- 1809. New trial or rehearing.

2. JUDGMENT, ORDER, OR DECREE.

- 1821. In general.
- 1822. Nature and essentials in general.
- 1823. Interlocutory or final.
- 1824. Scope and extent of relief granted.
- 1825. — In general.
- 1826. — Sale of property.
- 1827. — Amount of indebtedness.
- 1828. — Prepayment penalties.
- 1829. — Reimbursement of payments for taxes or insurance.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 1830. — Rights of and relief to defendants in general.
- 1831. — Other encumbrances.
- 1832. Rendition and entry.
- 1833. Form and requisites.
- 1834. Amendment or modification.
- 1835. Opening, vacating, or setting aside.
- 1836. — In general.
- 1837. — Grounds.
- 1838. — Proceedings.
- 1839. Assignment.
- 1840. Execution and enforcement.
- 1841. — In general.
- 1842. — Stay or other relief from enforcement.

3. PROCEEDINGS PRELIMINARY TO NONJUDICIAL FORECLOSURE.

- 1851. In general.
- 1852. Notice and hearing.
- 1853. Proceedings before clerk of court.
- 1854. Public trustee foreclosure proceedings.
- 1855. Dismissal.
- 1856. Judgment, order, or decree.
- 1857. Transfer of proceedings to court.
- 1858. — In general.
- 1859. — Scope and standard of review.
- 1860. Conversion to judicial foreclosure action.

(E) RESTRAINING FORECLOSURE.

- 1871. In general.
- 1872. Judicial foreclosure in general.
- 1873. Nonjudicial foreclosure in general.
- 1874. Injunction.
- 1875. — In general.
- 1876. — Permanent injunction.
- 1877. — Preliminary injunction.
- 1878. Temporary restraining order.
- 1879. Moratorium laws.
- 1880. — In general.
- 1881. — Mortgages and property within moratorium statute.
- 1882. — Equity of mortgagor in property, and prospects for redemption or refinancing.
- 1883. — Application of income from premises.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Expenses and charges deductible from income, and basis of accounting.
- (3). Proceedings to compel application of income.
- 1884. Proceedings to restrain foreclosure.
- 1885. — In general.
- 1886. — Jurisdiction and venue.
- 1887. — Time for proceedings; limitations and laches.
- 1888. — Mootness.
- 1889. — Persons entitled; standing; parties.
- 1890. — Pleading.
- 1891. — Evidence in general.
- 1892. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 1893. — Judgment, order, or decree.
- 1894. Continuing, modifying, or terminating restraint.
- 1895. Stay of restraint.

(F) RECEIVERSHIP.

- 1901. In general.
- 1902. Appointment of receiver.
- 1903. — In general.
- 1904. — Discretion of court.
- 1905. — Provisions for receiver in mortgage, deed of trust, or security deed.
- 1906. Grounds.
- 1907. — In general.
- 1908. — Inadequacy of security in general.
- 1909. — Inadequacy of security in connection with other circumstances.
- 1910. Proceedings for appointment of receiver.
- 1911. — In general.
- 1912. — Ex parte appointment.
- 1913. Bonds for receivership.
- 1914. Operation and effect of appointment of receiver.
- 1915. Receivership after sale.
- 1916. Rights, powers, duties, and liabilities of receiver.
- 1917. — In general.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 1918. — Duration and extension of receivership to other foreclosures.
- 1919. — Management and disposition of property and proceeds by receiver.
- 1920. — Proceedings by or against receiver.
- 1921. — Confirmation of receiver's sale of property.
- 1922. — Accounting, compensation, and discharge of receiver.
- 1923. Removal of receiver.

(G) SALE.**1. IN GENERAL.**

- 1931. In general.
- 1932. Time for exercise of power of sale.
- 1933. Bond for sale.
- 1934. Appraisal.
- 1935. — In general.
- 1936. — Notice.
- 1937. — Appraisers.
- 1938. — Manner, form, and requisites.
- 1939. — Defects and objections; opening or vacating.
- 1940. — Reappraisal.
- 1941. Certificate as to encumbrances.
- 1942. Persons who may sell; authority and powers.
- 1943. Notice of sale.
- 1944. — In general.
- 1945. — Form, requisites, and sufficiency.
- 1946. — Time for notice.
- 1947. — Persons entitled to notice.
- 1948. — Method of service.
 - (1). In general.
 - (2). Personal service.
 - (3). Mail.
 - (4). Publication or other constructive notice; advertisements.
 - (5). Electronic methods.
- 1949. — Return and proof.
- 1950. Place of sale.
- 1951. Time of sale.
- 1952. — In general.
- 1953. — Postponement, continuation, adjournment, or rescheduling of sale.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Notice.
- 1954. Cancellation of sale.
- 2. CONDUCT, TERMS, AND CONDITIONS OF SALE.**
 - 1961. In general.
 - 1962. Price.
 - 1963. Sale in parcels or in gross.
 - 1964. — In general.
 - 1965. — Order of offering for sale.
 - 1966. Persons who may purchase.
 - 1967. Bids.
 - 1968. — In general.
 - 1969. — Payment of bid.
 - 1970. — Failure to comply with bid.
 - (1). In general; grounds.
 - (2). Effect of noncompliance; liabilities of bidders.
 - (3). Enforcement of bid.
- 3. COMPLETION OF SALE.**
 - 1981. In general.
 - 1982. Affidavits and record of sale.
 - 1983. Report or return.
 - 1984. Confirmation of sale.
 - 1985. — In general.
 - 1986. — Necessity.
 - 1987. — Authority and discretion of court in general.
 - 1988. — Persons entitled to seek or challenge confirmation; standing; parties.
 - 1989. — Grounds and objections.
 - (1). In general.
 - (2). Appraisal.
 - (3). Notice.
 - (4). Conduct of sale.
 - (5). Adequacy of price.
 - 1990. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and venue.
 - (3). Time for proceedings; limitations and laches.
 - (4). Pleading or other mode of presentation.
 - (5). Evidence in general.
 - (6). Trial or hearing.
 - (7). Judgment, order, or decree.

266. MORTGAGES AND DEEDS OF TRUST

- XIII. FORECLOSURE.**(Cont'd)
- (8). Opening, vacating, or setting aside confirmation.
1991. Certificate of sale or certificate of purchase.
- 4. OPENING, VACATING, OR SETTING ASIDE SALE.**
2001. In general.
2002. Authority and discretion of court in general.
2003. Persons entitled to challenge or defend sale; standing; parties.
2004. Grounds.
2005. — In general.
2006. — Appraisal.
2007. — Notice.
2008. — Conduct of sale.
2009. — Adequacy of price.
2010. Proceedings.
2011. — In general.
2012. — Form of remedy and conditions precedent.
2013. — Jurisdiction and venue.
2014. — Time for proceedings; limitations and laches.
2015. — Process or other notice.
2016. — Pleading or other mode of presentation.
2017. — Evidence in general.
2018. — Trial or hearing.
2019. — Judgment, order, or decree.
- 5. RESALE.**
2031. In general.
2032. Upon failure to comply with bid.
2033. Upon denial of confirmation.
2034. Upon opening, vacating, or setting aside of sale.
- (H) TITLE AND RIGHTS OF PURCHASER.**
2041. In general.
2042. Nature and extent of rights acquired.
2043. — In general.
2044. — Time as of which rights vest in purchaser.
2045. — Rents and profits.
- (1). In general.
- (2). During redemption period.
2046. — Logs, timber, and crops.

- XIII. FORECLOSURE.**(Cont'd)
2047. — Liens and encumbrances.
- (1). In general.
- (2). Judgments.
- (3). Other mortgages or deeds of trust.
- (4). Taxes and insurance.
2048. — Leases.
2049. — Easements.
2050. — Bona fide purchasers.
2051. — Relief of purchaser against defects in title or property.
2052. Possession and recovery thereof.
2053. — In general.
2054. — During redemption period.
2055. — Remedies and proceedings.
- (1). In general.
- (2). Ejectment.
- (3). Writ of assistance.
- (4). Writ of possession.
- (5). Forcible or unlawful detainer.
- (6). Summary proceedings.
2056. Liabilities of purchasers.
2057. — In general.
2058. — As to application of proceeds.
2059. Rights and liabilities of subsequent purchasers or transferees.
2060. Conveyance to purchaser.
2061. — In general.
2062. — Recitals and reliance thereon.
2063. — Cancellation; void or voidable nature.
2064. — Correction of errors.
- (I) DEFICIENCY AND PERSONAL LIABILITY.**
2071. In general.
2072. Right to deficiency and grounds therefor.
2073. — In general.
2074. — Discretion of court in general.
2075. — Anti-deficiency laws.
2076. — Non-recourse loans.
2077. Defenses.
2078. — In general.
2079. — Bad faith; fraud.
2080. — Recoupment, set-off, or counterclaim.
2081. Actions and proceedings.
2082. — In general.
2083. — Conditions precedent.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 2084. — Jurisdiction and venue.
- 2085. — Time for proceedings; limitations and laches.
- 2086. — Persons entitled to sue; standing; parties.
- 2087. — Pleading.
- 2088. — Process or other notice.
- 2089. — Evidence in general.
- 2090. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2091. — Relief; amount of recovery.
- 2092. — New trial or rehearing.
- 2093. — Judgment, order, or decree.
 - (1). In general.
 - (2). Form and requisites.
 - (3). Amendment or modification.
 - (4). Opening, vacating, or setting aside.
- 2094. — Execution and enforcement.

(J) DISPOSITION OF PROCEEDS AND SURPLUS.

- 2101. In general.
- 2102. Prior liens and encumbrances.
- 2103. Application to mortgage debt.
- 2104. Debts or obligations secured by same mortgage.
- 2105. Taxes and insurance.
- 2106. Right to surplus.
- 2107. — In general.
- 2108. — Junior liens and encumbrances.
- 2109. — Proceedings for distribution.

(K) COSTS AND FEES.

- 2121. In general.
- 2122. Costs of action.
- 2123. Expenses of foreclosure and sale.
- 2124. — In general.
- 2125. — Fees of officials.
- 2126. — Taxes.
- 2127. — Environmental reports and assessments.
- 2128. Attorney fees.
- 2129. — In general.
- 2130. — Persons entitled.

XIII. FORECLOSURE.(Cont'd)

- 2131. — Grounds.
 - (1). In general.
 - (2). Prevailing parties.
 - (3). Stipulation or contract.
- 2132. — Items and services compensable.
 - (1). In general.
 - (2). Paralegal fees.
- 2133. — Amount and computation.
- 2134. Proceedings to impose.
- 2135. — In general.
- 2136. — Time for proceedings; limitations and laches.
- 2137. — Process or other notice.
- 2138. — Pleading; motion.
- 2139. — Evidence in general.
- 2140. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2141. — Judgment, order, or decree.

(L) CONCLUSIVENESS, OPERATION, AND EFFECT.

- 2151. In general.
- 2152. Of defects and irregularities in foreclosure process.
- 2153. Of foreclosure sale.
- 2154. — In general.
- 2155. — Defects and irregularities.
- 2156. — Effect of opening, vacation, or setting aside of sale.
- 2157. Of judgment, order, or decree in foreclosure proceedings.
- 2158. — In general.
- 2159. — Proceedings preliminary to nonjudicial foreclosure.
- 2160. — Proceedings restraining foreclosure.
- 2161. — Proceedings for deficiency.
- 2162. — Effect of modification, vacation, or reversal.
- 2163. — Collateral attack.
- 2164. Persons concluded or affected.
- 2165. — In general.
- 2166. — Assignees and other transferees.
- 2167. Matters concluded or affected.
- 2168. — In general.

266. MORTGAGES AND DEEDS OF TRUST**XIII. FORECLOSURE.(Cont'd)**

- 2169. — Satisfaction of debt.
- 2170. — Satisfaction of lien.
- 2171. — Bar of subsequent foreclosure.
- 2172. — Title to subject property.
- 2173. Rights and remedies of prior lienholders.
- 2174. Rights and remedies of junior lienholders.

(M) FORECLOSURE BY ENTRY, POSSESSION, AND NOTICE.

- 2181. In general.
- 2182. Right to foreclosure.
- 2183. Entry.
- 2184. Advertisement or other notice.
- 2185. Possession and duration thereof.
- 2186. Proceedings.
- 2187. Conclusiveness, operation, and effect.

(N) APPELLATE REVIEW.

- 2191. In general.
- 2192. Appellate jurisdiction.
- 2193. Decisions reviewable.
- 2194. — In general.
- 2195. — Finality.
- 2196. Right of review; standing; parties.
- 2197. Preservation or presentation of error in lower court; plain or fundamental error.
- 2198. Taking and perfecting appeal.
- 2199. — In general.
- 2200. — Certification of order as final.
- 2201. Briefs; statements of errors or issues.
- 2202. Record.
- 2203. Effect of appeal.
- 2204. — In general.
- 2205. — Stay pending appeal.
- 2206. — Supersedeas bonds.
- 2207. Hearing.
- 2208. Dismissal, withdrawal, or abandonment.
- 2209. — In general.
- 2210. — Want of actual controversy; mootness and ripeness.
- 2211. Scope and mode of review.
- 2212. — In general.
- 2213. — Standard of review.
- 2214. — Presumptions.
- 2215. — Harmless and reversible error.

XIII. FORECLOSURE.(Cont'd)

- 2216. — Waiver of error in appellate court.
- 2217. — Subsequent appeals.
- 2218. Determination and disposition.
- 2219. — In general.
- 2220. — Remand.

XIV. REDEMPTION.**(A) IN GENERAL.**

- 2231. In general.
- 2232. Right to redeem.
- 2233. — In general.
- 2234. — Equitable or statutory nature.
- 2235. — Character of instrument or transaction.
- 2236. — Provisions of mortgage or agreements.
- 2237. — Method of foreclosure.
- 2238. — Loss of right; waiver and estoppel.
 - (1). In general.
 - (2). Failure to vacate or deliver possession of premises.
 - (3). Transfer of mortgaged property to mortgagee.
- 2239. Persons entitled to redeem.
- 2240. — In general.
- 2241. — Lessees or tenants.
- 2242. — Creditors.
 - (1). In general.
 - (2). Lienholders.
 - (3). Judgment creditors.
- 2243. — Grantees or purchasers.
 - (1). In general.
 - (2). Purchasers at judicial sales.
 - (3). Purchasers at foreclosure sales.
- 2244. — Spouse, survivors, or heirs of mortgagor.
- 2245. Assignment or other transfer of right; rights of transferees.
- 2246. Persons against whom right may be exercised.
- 2247. Priority; order of redemption.
- 2248. Redemption from party previously redeeming.
- 2249. Notice of redemption or of intent to redeem.
- 2250. — In general.

266. MORTGAGES AND DEEDS OF TRUST**XIV. REDEMPTION.(Cont'd)**

- 2251. — Persons entitled to notice; service.
- 2252. Time for redemption.
- 2253. — In general.
- 2254. — Law day.
- 2255. — Tolling or extension of redemption period.
- 2256. — Agreements as to time.
- 2257. — Loss of right to redeem by lapse of time.
- 2258. Amount required to redeem.
- 2259. — In general.
- 2260. — Interest; late charges.
- 2261. — Fees, costs, and expenses in general.
- 2262. — Attorney fees.
- 2263. — Taxes and insurance.
- 2264. — Repair, maintenance, and improvements.
- 2265. — Damages for waste or other injury.
- 2266. — Rents and profits; value of use or occupation.
- 2267. Tender and payment.
- 2268. — In general.
- 2269. — Statements of amounts due or lawful charges.
- 2270. Redemption bonds.
- 2271. Certificate of redemption.
- 2272. — In general.
- 2273. — Recording.
- 2274. Partial redemption.

(B) ACTIONS AND PROCEEDINGS.

- 2281. In general.
- 2282. Nature, form, and right of action.
- 2283. Jurisdiction and venue.
- 2284. Time for proceedings; limitations and laches.
- 2285. Persons entitled to sue; standing; parties.
- 2286. Pleading.
- 2287. Evidence in general.
- 2288. — In general; admissibility.
- 2289. — Presumptions and burden of proof.
- 2290. — Weight and sufficiency.
- 2291. Reference.
- 2292. Trial or hearing.

XIV. REDEMPTION.(Cont'd)

- 2293. — In general.
- 2294. — Questions of law or fact in general.
- 2295. — Instructions.
- 2296. — Verdict, findings, and conclusions.
- 2297. Damages or other relief.
- 2298. Judgment, order, or decree.
- 2299. — In general.
- 2300. — Execution and enforcement.
- 2301. Costs and fees.
- 2302. Appellate review.

(C) CONCLUSIVENESS, OPERATION, AND EFFECT.

- 2311. In general.
- 2312. Extinguishment or termination of underlying debt or lien.
- 2313. Annulment of foreclosure sale.
- 2314. Other liens or encumbrances.
- 2315. Effect of failure to redeem.
- 2316. Effect of improper redemption.

XV. WRONGFUL ENFORCEMENT OR FORECLOSURE.

- 2321. In general.
- 2322. Existence, nature, and form of remedy.
- 2323. — In general.
- 2324. — Attempted wrongful enforcement or foreclosure.
- 2325. Elements, grounds, and defenses.
- 2326. — In general.
- 2327. — Attempted wrongful enforcement or foreclosure.
- 2328. — Particular cases.
 - (1). In general.
 - (2). Attempted wrongful enforcement or foreclosure.
- 2329. Actions and proceedings.
- 2330. — In general.
- 2331. — Conditions precedent.
- 2332. — Jurisdiction and venue.
- 2333. — Time for proceedings; limitations and laches.
- 2334. — Persons entitled to sue; standing; parties.
- 2335. — Pleading.
- 2336. — Evidence in general.
 - (1). In general; admissibility.

266. MORTGAGES AND DEEDS OF TRUST

**XV. WRONGFUL ENFORCEMENT
OR FORECLOSURE.**(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
- 2337. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2338. — Damages or other relief.
- 2339. — Judgment, order, or decree.
 - (1). In general.
 - (2). Conclusiveness, operation, and effect.
 - (3). Execution and enforcement.
- 2340. — Costs and fees.
- 2341. — Appellate review.

XVI. REVERSE MORTGAGES.

- 2351. In general.
- 2352. Remedies and enforcement in general.
- 2353. — In general.
- 2354. — Exclusive, concurrent, and conflicting remedies; election.
- 2355. — Waiver, estoppel, and consent.
- 2356. — Compromise, settlement, and release.
- 2357. Actions and proceedings in general.
- 2358. Foreclosure and foreclosure proceedings.
- 2359. — In general.
- 2360. — Appellate review.
- 2361. Redemption.
- 2362. Wrongful enforcement or foreclosure.

267. MOTIONS

SUBJECTS INCLUDED

Applications to a court or judge by or on behalf of parties to actions or other proceedings for a rule or order incident to the progress of the cause

Other applications for summary relief, and determination thereof

Nature, use, and scope of such applications in general

Requisites, filing, service, amendment, sufficiency, and effect of affidavits or petitions, notices of motion or orders to show cause, affidavits in answer and in reply, and other papers on which motions are made or opposed, and procedure relating thereto

Hearing, rehearing, decision, and renewal of motions

Making, entry, and effect of rules or orders

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Dismissal and nonsuit, motions for, see PRE-TRIAL PROCEDURE

Motions relating to—

Parties, process, pleadings and other particular proceedings in actions, see PARTIES, PROCESS, PLEADING, and other specific topics

Remedies incident to actions, see ARREST, CREDITORS' REMEDIES, and other specific topics

New trial motions, see NEW TRIAL

Judgment, motions to open or vacate, or in arrest of judgment, see JUDGMENT

Rules of court, see COURTS

- 1. Nature of proceeding.
- 2. Scope and purposes of remedy.
- 3. Existence of or resort to other remedy.
- 4. Successive motions for same relief.
- 5. Joinder in same motion of different grounds or forms of relief.
- 6. Jurisdiction.
- 7. — In general.
- 8. — Judge at chambers or out of court.
- 9. Place of moving.
- 10. Time for moving.
- 11. Parties.
- 12. Form and requisites.
- 12.1. — In general.
- 13. — Oral motions.
- 14. — Written motions in general.
- 15. — Entitling.
- 16. — Statement of grounds.
- 17. — Filing or entry.
- 18. Notice.

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- 18.1. — In general.
- 19. — Necessity.
- 20. — Authority to give.
- 21. — Form and requisites.
- 22. — Service and filing.
- 23. — Waiver.
- 24. Rule nisi or order to show cause.
- 25. Affidavits and other motion papers.
- 25.1. — In general.
- 26. — Necessity.
- 27. — Taking affidavits in general.
- 28. — Compelling making of affidavits.
- 29. — Requisites and sufficiency.
- 30. — Service and filing.
- 31. Counter affidavits and other opposing papers.
- 32. Appearance for purpose of motion.
- 33. Quashing or dismissal.
- 34. Countermanding, withdrawal, or abandonment.
- 35. Hearing.
- 36. — In general.
- 37. — Reception of evidence.
- 38. Reference.
- 39. Reargument or rehearing.
- 40. Determination.
- 41. Renewal.
- 42. — In general.
- 43. — Leave to renew.
- 44. — Motion papers.
- 45. — Hearing and determination.
- 46. Nature and essentials of orders in general.
- 47. Orders on consent.
- 48. Orders by default.
- 49. Settlement of orders.
- 50. Form and requisites of orders.
- 51. — In general.
- 52. — Recitals.
- 53. — Award of relief.
- 54. — Order nunc pro tunc or relation back.
- 55. — Direction to enter or signature.
- 56. Entry or filing of orders.
 - (1). In general.
 - (2). Entry nunc pro tunc.
- 57. Notice or service of orders.
- 58. Amendment of orders.
- 59. Vacating or setting aside orders.

- (1). In general.
- (2). Authority and jurisdiction of court or judge.
- (3). Proceedings.
- 60. Reinstatement of order vacated.
- 61. Collateral attack on orders.
- 62. Construction and operation of orders in general.
- 65. Recitals.
- 66. Enforcement of orders.

268. MUNICIPAL CORPORATIONS**SUBJECTS INCLUDED**

Public corporations formed under special charters or by voluntary organization under general laws for purposes of subordinate local government of cities, towns, villages, etc.

Their status as bodies politic and corporate

Their creation, organization, boundaries, divisions, alteration, amendment or forfeiture of charters, and dissolution

Corporate powers and legislative regulation and control

Meetings of governing bodies, and passage of resolutions, ordinances, and by-laws

Municipal boards, officers, and agents, and their rights, powers, proceedings, and liabilities

Public improvements and assessments therefor, and grants of franchises or aid thereto

Control and regulation of public places and works, police regulations, permits, violations of regulations, and liabilities incurred in performance or for nonperformance of municipal duties or for acts of municipal boards, officers, or agents

Municipal property, contracts, indebtedness, bonds, and other securities

Municipal taxation, revenue, and finances other than income taxes and sales and use taxes

Claims against municipal corporations

Actions by or against municipal corporations

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Criminal prosecutions against municipal corporations

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS

Counties, parishes, etc., see COUNTIES

Dedication of lands for streets and other municipal purposes, see DEDICATION

Election of municipal officers, see ELECTION LAW

Eminent domain, see EMINENT DOMAIN

Incidental works, structures, etc., maintenance and operation, see BRIDGES, FERRIES, WATER LAW, and other specific topics

Minor territorial subdivisions for special purposes, see EDUCATION, ELECTION LAW, and other specific topics

Municipal courts and judges, see COURTS, JUDGES

Municipal income taxes and sales and use taxes, see TAXATION

Particular proceedings against municipal corporations, their officers, etc., see QUO WARRANTO, MANDAMUS, PROHIBITION, INJUNCTION, CERTIORARI, and other specific topics

Public housing, see LANDLORD AND TENANT

Townships and towns not specially incorporated, see TOWNS

Zoning, see ZONING AND PLANNING

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION,
⌘1-51.

(A) INCORPORATION AND INCIDENTS OF EXISTENCE, ⌘1-22.

(B) TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION, ⌘23-43.

(C) AMENDMENT, REPEAL, OR FORFEITURE OF CHARTER, AND DISSOLUTION, ⌘44-51.

II. GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL,
⌘52-63.2.

III. LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS, AND LIABILITIES, ⌘64-79.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY,
⌘80-122.

(A) MEETINGS, RULES, AND PROCEEDINGS IN GENERAL,
⌘80-104.

(B) ORDINANCES AND BY-LAWS IN GENERAL, ⌘105-122.

V. OFFICERS, AGENTS, AND EMPLOYEES, ⌘123-220.

(A) MUNICIPAL OFFICERS IN GENERAL, ⌘123-174.

(B) MUNICIPAL DEPARTMENTS AND OFFICERS THEREOF, ⌘175-213.

(C) AGENTS AND EMPLOYEES,
⌘214-220.

VI. PROPERTY, ⌘221-225.

VII. CONTRACTS IN GENERAL,
⌘226-255.5.

VIII. MUNICIPAL EXPENSES AND CHARGES AND STATUTORY LIABILITIES, ⌘256-264.

IX. PUBLIC IMPROVEMENTS,
⌘265-588.

(A) POWER TO MAKE IMPROVEMENTS OR GRANT AID THEREFOR, ⌘265-288.

(B) PRELIMINARY PROCEEDINGS AND ORDINANCES OR RESOLUTIONS, ⌘289-325.

(C) CONTRACTS, ⌘326-376.5.

(D) DAMAGES, ⌘377-404.

(E) ASSESSMENTS FOR BENEFITS, AND SPECIAL TAXES,
⌘405-524.

(F) ENFORCEMENT OF ASSESSMENTS AND SPECIAL TAXES,
⌘525-588.

X. POLICE POWER AND REGULATIONS, ⌘589-645.

(A) DELEGATION, EXTENT, AND EXERCISE OF POWER, ⌘589-629.

(B) VIOLATION AND ENFORCEMENT OF REGULATIONS,
⌘630-645.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS, ⌘646-722.

(A) STREETS AND OTHER PUBLIC WAYS, ⌘646-707.

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268. MUNICIPAL CORPORATIONS**XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS—Cont'd**

- (C) PUBLIC BUILDINGS, PARKS, AND OTHER PUBLIC PLACES AND PROPERTY, ⚭716–722.

XII. TORTS, ⚭723–857.

- (A) EXERCISE OF GOVERNMENTAL AND CORPORATE POWERS IN GENERAL, ⚭723–743.
- (B) ACTS OR OMISSIONS OF OFFICERS OR AGENTS, ⚭744–754.
- (C) DEFECTS OR OBSTRUCTIONS IN STREETS AND OTHER PUBLIC WAYS, ⚭755–826.
- (D) DEFECTS OR OBSTRUCTIONS IN SEWERS, DRAINS, AND WATER COURSES, ⚭827–846.
- (E) CONDITION OR USE OF PUBLIC BUILDINGS AND OTHER PROPERTY, ⚭847–857.

XIII. FISCAL MATTERS, ⚭858–986.

- (A) POWER TO INCUR INDEBTEDNESS AND EXPENDITURES, ⚭858–878.
- (B) ADMINISTRATION IN GENERAL, APPROPRIATIONS, WARRANTS, AND PAYMENT, ⚭879–905.
- (C) BONDS AND OTHER SECURITIES, AND SINKING FUNDS, ⚭906–955.
- (D) TAXES AND OTHER REVENUE, AND APPLICATION THEREOF, ⚭956–986.

XIV. TAXPAYERS' SUITS AND OTHER REMEDIES, ⚭987–1000.**XV. CLAIMS AGAINST CORPORATION, ⚭1001–1015.****XVI. ACTIONS, ⚭1016–1040.****XVII. CRIMINAL RESPONSIBILITY, ⚭1041–1043.****I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.****(A) INCORPORATION AND INCIDENTS OF EXISTENCE.**

1. Nature and status as corporations.
 - 1.1. — In general.
2. — Public and quasi municipal corporations.
3. Power to create.
4. Constitutional provisions.
5. Grounds for incorporating.
6. Bodies which may be incorporated.
7. Territory which may be included.

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.(Cont'd)

8. Special charters or acts.
 9. General laws.
 - 9.1. — In general.
 10. — Enactment and provisions.
 11. — Construction and operation in general.
 12. — Proceedings for incorporation.
 - (1). In general.
 - (2). Petition or application.
 - (2.1). — In general.
 - (3). — Designation of boundaries and annexation of map or plat.
 - (4). — Requisites as to petitioners.
 - (5). — Withdrawal of petitioners.
 - (6). Notice and objections thereto.
 - (7). Hearing of petition or application.
 - (8). Submission of question to popular vote.
 - (9). Order, judgment, or decree.
 - (10). Record of proceedings.
 - (11). Restraining proceedings.
 - (12). Review.
 - (13). Costs.
 13. — Organization of corporation.
 14. Defective incorporation or organization.
 15. Curative statutes.
 16. Official recognition of corporation.
 17. De facto corporations.
 18. Attacking validity of incorporation.
 19. Succession to pre-existing rights and liabilities.
 20. Evidence of corporate existence.
 21. Corporate name.
 22. Classification and grades of corporations.
- (B) TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION.**
23. Territory included in general.
 24. Designation of boundaries.
 25. Establishment of boundaries.
 26. Alteration and creation of new municipalities.
 - 26.1. — In general.
 27. — Power to make change.
 28. — Change of boundaries in general.
 29. — Annexation of territory.
 - (.5). In general.

268. MUNICIPAL CORPORATIONS**I. CREATION, ALTERATION, EXISTENCE,
AND DISSOLUTION.(Cont'd)**

- (1). Constitutionality and validity and effect of statutes in general.
- (2). Power to annex territory in general.
- (3). Grounds for and objections to annexation.
- (4). Territory which may be annexed.
- 30. — Detachment of territory.
- 31. — Consolidation.
- 32. — Division.
- 33. — Proceedings.
 - (1). In general.
 - (2). Ordinances annexing or detaching territory.
 - (3). Who may apply for alteration and parties.
 - (4). Notice.
 - (5). Petition.
 - (6). Evidence.
 - (7). Judgment or order.
 - (8). Review.
 - (9). Proceedings to prevent or contest annexation in general.
 - (10). Collateral attack on proceedings.
- 34. — Submission of question to inhabitants or property owners.
- 35. — Operation and effect.
- 36. — Adjustment of pre-existing rights and liabilities.
 - (1). In general.
 - (2). Property.
 - (3). Contracts and indebtedness.
 - (4). Taxes and assessments.
 - (5). Municipal officers and employees.
 - (5.1). — In general.
 - (6). — Transfer to similar positions in new municipality.
 - (7). — Extinguishment or continuation of offices.
 - (8). — Compensation.
 - (9). — Pensions and benefit funds.
 - (10). Actions on pre-existing liabilities.
- 37. — Continuing operation of pre-existing ordinances.
- 38. Annexation or detachment of territory for special purposes.
- 39. Separate municipalities in same territory or in consolidated corporation.

**I. CREATION, ALTERATION, EXISTENCE,
AND DISSOLUTION.(Cont'd)**

- 40. Wards, precincts, and other subdivisions.
- 41. Plan of city or town.
See also ZONING AND PLANNING.
- 42. Plats and surveys by public authority.
See also ZONING AND PLANNING.
- 43. Plats, additions, and subdivisions made by landowners.
See also ZONING AND PLANNING.
- (C) AMENDMENT, REPEAL, OR FORFEITURE
OF CHARTER, AND DISSOLUTION.**
- 44. Power to amend charter or statute.
- 45. Charter commissions or boards.
- 46. Amendment of charter or special act.
- 47. Amendment of general laws.
- 48. New charter and reorganization.
 - (1). In general.
 - (2). Operation and effect.
- 49. Repeal of charter or act of incorporation.
- 50. Forfeiture of charter.
- 51. Dissolution of corporation.

**II. GOVERNMENTAL POWERS AND
FUNCTIONS IN GENERAL.**

- 52. Political status and relations.
- 53. — In general.
- 54. — Relation to state.
- 55. — Relation to county.
- 56. Constitutional provisions.
- 57. Powers and functions of local government in general.
- 58. Construction of charters and statutory provisions.
- 59. Powers incident to execution of those granted.
- 60. Powers and functions of council or other governing body.
- 61. Mode of exercise of powers in general.
- 62. Delegation or surrender of authority.
- 63. Judicial supervision.
 - 63.1. — In general.
 - 63.5. — Discretion.
 - 63.10. — Motives, wisdom or propriety of action.
 - 63.15. — Particular powers and functions.
 - (1). In general.
 - (2). Public improvements; redevelopment.
 - (3). Police power and regulations.

268. MUNICIPAL CORPORATIONS**II. GOVERNMENTAL POWERS AND
FUNCTIONS IN GENERAL.(Cont'd)**

- (4). Use and regulation of public places, property and works.
- (5). Fiscal management, revenue and taxation.
- 63.20. — Reasonableness of ordinances.

**III. LEGISLATIVE CONTROL OF MUNICIPAL
ACTS, RIGHTS, AND LIABILITIES.**

- 64. Nature and scope of legislative power in general.
- 64.5. Organization of local government.
- 65. Local legislation.
- 66. Local administration.
- 67. Appointment and removal of officers.
 - (1). In general.
 - (2). Boards and commissions.
 - (3). Fixing or extending term of office.
 - (5). Compensation of officers.
- 68. Municipal property.
- 69. Imposition of liabilities in general.
- 70. Public improvements.
- 71. Grants of franchises or privileges.
- 72. Municipal debt, securities, and funds.
- 73. Municipal taxes and other revenue.
- 74. Mode of exercise of control in general.
- 75. Consent of local authorities or voters.
- 76. Confirmation or ratification of municipal acts.
- 77. Operation and effect of legislative acts.
- 78. — In general.
- 79. — Conflict with charter or act of incorporation.

**IV. PROCEEDINGS OF COUNCIL OR
OTHER GOVERNING BODY.****(A) MEETINGS, RULES, AND PROCEEDINGS
IN GENERAL.**

- 80. Nature and constitution of body in general.
- 81. Mayor as member of body.
- 82. Separate houses or branches.
- 83. Organization.
- 84. Determination of qualifications of members.
- 85. Mode of action in general.
- 86. Place and time of meeting.
- 87. Special meetings.
- 88. Adjourned meetings.

**IV. PROCEEDINGS OF COUNCIL OR OTHER
GOVERNING BODY.(Cont'd)**

- 89. Calling and notice of meeting.
- 90. Quorum or number required to be present or act.
- 91. Committees.
- 92. Rules of procedure and conduct of business.
- 93. Right to vote.
- 94. — In general.
- 95. — Disqualification by interest.
- 96. Mode of voting.
- 97. Number of votes required.
- 98. Tie votes and casting vote.
- 99. Determination of result of vote.
- 100. Minutes and records.
- 101. Publication of proceedings.
- 102. Reconsideration and rescission of action.
- 103. Operation and effect of decisions.
- 104. Appeal from decisions.

(B) ORDINANCES AND BY-LAWS IN GENERAL.

- 105. Nature and requisites in general.
- 106. Enactment.
 - (1). In general.
 - (2). Reading, reference to committee, and time for passage.
 - (2.1). — In general.
 - (3). — Suspension of rules.
 - (4). Passage by both houses or branches.
- 107. Approval or veto.
 - (1). In general.
 - (2). Necessity for approval or signature.
 - (3). Requisites and sufficiency of approval or veto.
 - (4). Passage notwithstanding veto.
- 108. Initiative.
 - 108.1. — In general.
 - 108.2. — Matters subject to initiative.
 - 108.3. — Initiative procedure.
 - 108.4. — Amendment or repeal of initiated ordinances.
 - 108.5. Referendum.
 - 108.6. — In general; nature and source of power.
 - 108.7. — Administrative matters.
 - 108.8. — Legislative matters.

268. MUNICIPAL CORPORATIONS**IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.(Cont'd)**

- 108.9. — Tests of whether matter is administrative or legislative.
- 108.10. — Referendum procedure.
- 108.11. — Amendment or repeal of ordinances adopted on referendum.
- 109. Record.
- 110. Publication.
- 111. Validity in general.
 - (1). In general.
Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.
 - (2). Conformity to constitutional and statutory provisions in general.
 - (3). Reasonableness and uniformity of operation.
 - (4). Effect of partial invalidity.
 - (5). Invalidity of dependent ordinance.
 - (6). Conflict with prior ordinance.
 - (7). Motives for enacting ordinance.
 - (8). Disqualification of members of board or council.
 - (9). Validating void ordinance.
- 112. Subjects and titles.
 - (1). In general.
 - (2). Plurality of subjects.
 - (3). Expression of subject in title.
- 113. Annulment.
- 114. Amendment.
- 115. Express repeal.
- 116. Implied repeal.
- 117. Suspension.
- 118. Expiration.
- 119. Revival.
- 120. Construction and operation.
 - (1). In general.
 - (2). Applicability of statutory construction rules.
 - (3). Intent.
 - (4). Plain, ordinary, or common meaning.
 - (5). Ambiguity.
 - (6). Ordinance as a whole.
 - (7). Extrinsic aids.
 - (8). Legislative history and construction.
 - (9). Executive or administrative construction.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.(Cont'd)

- (10). Other law, construction with reference to.
- (11). Operation and effect in general.
- (12). Construction in view of effects, consequences, or results.
- (13). Creation of contractual or other rights.
- (14). Effective date; retroactivity.
- 121. Proceedings concerning construction and validity of ordinances.
- 122. Pleading.
- 122.1. Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.

V. OFFICERS, AGENTS, AND EMPLOYEES.**(A) MUNICIPAL OFFICERS IN GENERAL.**

- 123. Nature of municipal office or employment.
- 124. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Appointment or election.
 - (3). Eligibility and qualification.
 - (4). Term of office, vacancies, and holding over.
 - (5). Removal.
 - (6). Compensation.
- 125. Applicability of civil service laws in general.
- 126. Creation and abolition of offices.
- 127. Apportionment to subdivisions.
- 128. Appointment or election.
- 129. — In general.
- 130. — Right to elect.
- 131. — Authority to appoint.
- 132. — Preference of discharged soldiers, sailors, or marines, or veteran firemen.
- 133. — Restrictions of civil service laws or rules.
- 134. — Application for and making of appointment in general.
- 135. — Concurrent action of different officers or bodies.

268. MUNICIPAL CORPORATIONS**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- 136. — Proceedings to determine validity of appointment or election.
- 137. Eligibility.
- 138. — In general.
- 139. — Under civil service laws, rules, and examinations.
- 140. — Pecuniary interest.
- 141. — Membership in council or board making appointment.
- 142. — Holding other office or employment.
- 143. Qualification.
- 143.1. — In general.
- 144. — Oath.
- 145. — Bond.
- 146. Commission.
- 147. De facto officers.
- 148. Deputies and assistants.
- 149. Term of office, vacancies, and holding over.
 - (1). In general.
 - (2). Term of office in general.
 - (3). Term of officer appointed or elected to fill vacancy.
 - (4). Enlargement of term and holding over after expiration of term.
 - (5). Effect of transfer of city from one class to another.
- 150. Resignation or abandonment.
- 151. Disqualification.
- 152. Suspension.
- 153. Removal.
- 154. — In general.
- 155. — Authority to remove.
- 156. — Grounds.
- 157. — Preference of discharged soldiers, sailors, or marines, or veteran firemen.
 - (1). In general.
 - (2). Abolition of office and transfer to other service.
- 158. — Restrictions of civil service laws or rules.
- 159. — Proceedings and review.
 - (1). In general.
 - (2). Competency of officers to act in proceedings.
 - (3). Persons entitled to institute proceedings.

**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- (4). Notice and hearing.
- (5). Statement of charges.
- (6). Review.
- 160. — Operation and effect.
- 161. Compensation.
- 162. — In general.
- 162.1. — Particular acts or services in general.
- 162.2. — Extra services; services pertaining to other offices.
- 162.3. — Effect of suspension; de jure or de facto officers.
- 162.4. — Effect of removal or expiration of term.
- 162.5. — Interest on public funds.
- 162.6. — Allowance of salary or fees.
- 162.7. — Payment and effect thereof.
- 163. — Reimbursement of expenditures.
- 164. — Increase or diminution.
- 165. — Actions and proceedings.
- 166. Authority and powers.
- 167. — In general.
- 168. — Mayor or other chief executive.
- 169. — Particular executive officers.
- 170. Duties and liabilities.
- 172. Accounting for municipal funds or other property.
- 173. Liabilities on official bonds.
 - (1). In general.
 - (2). Acts constituting breach of bond.
 - (3). Liability for particular funds.
 - (4). Officer holding over or succeeding himself and effect of new bond.
 - (5). Actions.
- 174. Criminal responsibility.

**(B) MUNICIPAL DEPARTMENTS
AND OFFICERS THEREOF.**

- 175. Nature and status of departments or boards as corporations.
- 176. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Public works.
 - (3). Police and fire.
 - (3.1). — In general.
 - (4). — Commissioners, board, or other governing body.

268. MUNICIPAL CORPORATIONS**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- (5). — Chief or marshal or other executive.
- (6). Water and sewers.
- (7). Education.
- 177. Creation, abolition, and incidents of existence of departments in general.
- 177.5. Assignment of officers or commissioners to departments.
- 178. Public works.
- 179. Police.
- 180. — In general.
 - (1). In general.
 - (2). Grades of service.
 - (3). Creation and abolition of offices.
- 181. — Commissioners, board, or other governing body.
- 182. — Chief or superintendent or other executive.
- 183. — Marshal.
 - (.5). In general.
 - (1). Appointment or election.
 - (1.1). Eligibility.
 - (1.5). Bond.
 - (2). Term of office, vacancies, and holding over.
 - (3). Removal.
 - (4). Compensation.
 - (5). Authority, powers, and liabilities.
 - (6). Liabilities on official bonds.
- 184. — Appointment of policemen.
 - (1). In general.
 - (2). Eligibility, examination, certification, and qualification.
 - (3). Term of office, vacancies, and holding over.
 - (4). Resignation and abandonment.
- 184.1. — Promotion of policemen.
- 185. — Suspension and removal of policemen.
 - (.5). In general.
 - (1). Grounds for removal or suspension.
 - (2). Defenses.
 - (3). Proceedings to remove in general.
 - (4). Necessity of assignment of cause and right to trial or hearing.
 - (5). Authority to remove, take evidence, or conduct hearing.

**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- (6). Notice and time of hearing.
- (7). Charges.
- (8). Conduct of hearing in general.
- (9). Evidence in general.
- (10). Sufficiency of evidence to support finding or decision.
- (11). Order or recommendation.
- (12). Review in general.
- (13). Review by certiorari.
- (14). Reinstatement.
- (15). Wrongful dismissal.
- 186. — Pay and other compensation.
 - (1). In general.
 - (2). Right to fees.
 - (3). Waiver of right to compensation.
 - (4). Effect of absence, removal, suspension, or expiration of term.
 - (5). Rate and amount.
 - (6). Actions to recover compensation.
- 187. — Pensions and benefit funds.
 - (1). In general.
 - (2). Eligibility for, and right to pension or benefits in general.
 - (3). Age and length of service.
 - (4). Contributions or assessments.
 - (5). Disability pension or compensation.
 - (6). Death benefits.
 - (7). Rate or amount.
 - (8). Proceedings to obtain pensions or benefits.
 - (8.1). — In general.
 - (9). — Evidence.
 - (10). — Review of decisions.
 - (11). Revocation, suspension, or termination.
- 188. — Authority and powers of policemen.
See also, Arrest, CRIMINAL LAW ¶1222-1224 and Searches and Seizures.
- 189. — Rights, duties, and liabilities of policemen.
 - (1). In general.
 - (2). Fines imposed by department officers.
 - (3). Protection from liability to third persons and reimbursement of expenditures.

268. MUNICIPAL CORPORATIONS**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- 190. — Criminal responsibility.
- 191. Health.
- 192. Buildings.
- 193. Fire.
- 194. — In general.
- 195. — Commissioners, board, or other governing body.
- 196. — Chief or superintendent or other executive.
- 197. — Appointment and promotion of firemen.
- 198. — Suspension and removal of firemen.
 - (1). In general.
 - (2). Grounds for removal.
 - (3). Proceedings.
 - (4). Review.
 - (5). Reinstatement.
- 199. — Pay and other compensation.
- 200. — Pensions and benefit funds.
 - (1). In general.
 - (2). Eligibility for, and right to pension or benefits in general.
 - (3). Membership in department.
 - (4). Contributions or assessments.
 - (5). Disability pension or compensation.
 - (6). Death benefits.
 - (7). Rate or amount.
 - (8). Proceedings to obtain pensions or benefits.
 - (8.1). — In general.
 - (9). — Evidence.
 - (10). — Review of decisions.
 - (11). Revocation, suspension, or termination.
- 201. — Authority and powers.
- 202. — Duties and liabilities.
- 203. Streets and street cleaning.
- 204. Sewers and drains.
- 205. Water.
- 206. Light.
- 207. Conduits and subways.
- 208. Wharves and docks.
- 209. Markets.
- 210. Parks.
- 211. Education.

**V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)**

- 212. Charities and correction.
- 213. Particular institutions, buildings, or works.
- (C) AGENTS AND EMPLOYEES.**
- 214. Power to appoint or employ.
 - (1). In general.
 - (2). Architects.
 - (3). Counsel.
 - (4). Ratification of unauthorized employment.
 - (5). Delegation of power to appoint.
- 215. Constitutional and statutory provisions.
- 216. Applicability of civil service laws in general.
 - (1). In general.
 - (2). Rules.
- 217. Appointment or employment.
- 217.1. — In general.
- 217.2. — Probationary or temporary appointment.
- 217.3. — Examination, classification, certification, and eligibility.
 - (.5). In general.
 - (1). Examination.
 - (2). Classification.
 - (3). Certification.
 - (4). Eligibility.
 - (5). Eligible list.
- 217.4. — Preference of discharged soldiers, sailors, or marines.
- 217.5. — Transfer and promotion.
- 217.6. — Term of agency or employment and vacancies.
- 218. Removal, discharge, transfer or demotion.
 - (1). In general.
 - (2). Employees protected by civil service laws and rules.
 - (3). Grounds.
 - (4). Preference of discharged soldiers, sailors, or marines.
 - (5). Preference of veteran firemen.
 - (6). Abolition of offices or positions.
 - (7). Reduction of compensation or transfer to other employment.
 - (8). Proceedings.
 - (9). Review.

268. MUNICIPAL CORPORATIONS**V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)**

- (10). Liability for unauthorized acts.
- (11). Reinstatement.
- 219. Scope of agency or employment.
- 220. Compensation.
 - (1). In general.
 - (2). Rate or amount.
 - (3). Increase or diminution.
 - (4). Compensation for particular services.
 - (5). Compensation during absence in general.
 - (6). Compensation after discharge, suspension, or retirement.
 - (7). Necessity for appropriation.
 - (8). Proceedings to recover compensation.
 - (9). Pensions and benefits.

VI. PROPERTY.

- 221. Capacity to acquire and hold property in general.
- 222. Constitutional and statutory provisions.
- 223. Purposes for which property may be acquired or held.
- 224. Mode of acquiring property.
- 225. Sale or other disposition of property.
 - (1). In general.
 - (2). Delegation of power.
 - (3). Property acquired or held for special purpose.
 - (4). Authority and powers of committee or officers.
 - (5). Requisites and validity of conveyance or disposition.
 - (6). Payment of price and disposition of proceeds.

VII. CONTRACTS IN GENERAL.

- 226. Capacity to contract in general.
- 227. Constitutional and statutory provisions.
- 228. Powers of council or other governing body.
- 229. Powers of particular departments.
- 230. Powers of officers or boards.
- 231. Individual interest of officer.
 - (1). In general.
 - (2). Public improvements.

VII. CONTRACTS IN GENERAL.(Cont'd)

- (3). Contracts with corporation or partnership in which officer is interested.
 - (4). Recovery on quantum meruit or implied contract.
 - 232. Power to bind successors.
 - 233. Term or duration of contract.
 - 234. Proposals or bids.
 - 235. — In general.
 - 236. — Contracts to be submitted to competition.
 - 237. — Request or advertisement.
 - 238. — Form and requisites.
 - 239. — Deposit or other security.
 - 240. — Acceptance or rejection in general.
 - 241. — Award to lowest bidder.
 - 242. — Failure of bidder to enter into contract.
 - 243. Formal requisites.
 - 244. Validity and sufficiency.
 - (1). In general.
 - (2). Manner of making contract.
 - (3). Effect of partial invalidity and presumptions in favor of validity.
 - 245. Contractors' bonds.
 - 246. Unauthorized or illegal contracts.
 - 247. — In general.
 - 248. — Ratification.
 - (1). In general.
 - (2). Ratification of contract in which officer is interested.
 - (3). Requisites and sufficiency of ratification.
 - 249. Implied contracts.
 - 250. Construction and operation.
 - 251. Assignment.
 - 252. Modification or rescission.
 - 253. Performance or breach.
 - 254. Rights and remedies of contractor and sureties.
 - 255. Rights and remedies of municipality.
 - 255.5. Priority of municipality as creditor.
- VIII. MUNICIPAL EXPENSES AND CHARGES AND STATUTORY LIABILITIES.**
- 256. Nature and grounds of liability.
 - 257. Constitutional and statutory provisions.

268. MUNICIPAL CORPORATIONS**VIII. MUNICIPAL EXPENSES AND CHARGES AND STATUTORY LIABILITIES.(Cont'd)**

- 258. Expenses of municipal government in general.
- 259. Election expenses.
- 261. Expenses connected with administration of justice.
- 262. — In general.
- 263. — Enforcement of municipal ordinances.
- 264. Liabilities specially imposed by statute.

IX. PUBLIC IMPROVEMENTS.**(A) POWER TO MAKE IMPROVEMENTS OR GRANT AID THEREFOR.**

- 265. Nature and grounds of power in general.
- 266. Constitutional and statutory provisions.
- 267. Nature and purposes of improvements in general.
- 268. Public buildings.
- 269. Streets and other ways.
 - (1). In general.
 - (2). Construction, improvement, and repair.
 - (3). Establishment or change of grade and vacation.
 - (4). Sidewalks, footways, or crosswalks.
 - (5). Improvements interfering with franchises in streets.
- 270. Sewers, drains, and water courses.
- 271. Water supply.
- 272. Lighting.
- 273. Conduits and subways.
- 273.5. Transportation and communication.
- 274. Wharves and docks.
- 275. Markets.
- 276. Parks and other public places.
- 277. Improvements and works beyond boundaries of municipality.
- 278. Exercise of power in general.
 - (.5). In general.
 - (1). Public convenience or necessity.
 - (2). Conditions precedent in general.
 - (3). Establishment of grade before permanent improvement.
 - (4). Recommendation by particular officers.
- 279. Submission of question to popular vote.
- 280. Necessity for application or consent of owners of property affected.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (1). In general.
- (2). Grading, curbing, and paving.
- (3). Sidewalks.
- (4). Alteration of width or grade of street.
- (5). Sewers.
- 281. Right or duty of property owners to make improvements.
 - (1). In general.
 - (2). Opportunity as prerequisite to award of contract or assessment.
 - (3). Notice to improve.
 - (4). Compliance with order or notice.
 - (5). Time allowed for making improvements.
- 282. Basis or plan of improvements.
 - (1). In general.
 - (2). Width and grade of streets or other ways.
 - (3). Sewers.
 - (4). Materials for construction.
- 283. Mode and time of doing work.
- 284. Delegation of power by municipality.
 - (1). In general.
 - (2). Basis or plan of improvement and mode of doing work.
 - (3). Designation of materials.
 - (4). Contracts.
 - (5). Assessments.
- 285. Power to grant franchise or privilege in general.
- 286. Mode of aiding improvements.
- 287. Acquisition of existing works.
- 288. Mode and means of defraying expenses.
 - (1). In general.
 - (2). Requirement of means for payment.
 - (3). Certificate of officers as to sufficiency of funds.
- (B) PRELIMINARY PROCEEDINGS AND ORDINANCES OR RESOLUTIONS.**
- 289. Necessity and nature of proceedings in general.
 - (1). In general.
 - (2). Improvements which may be included in one proceeding.
- 290. Statutory provisions.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- 291. Right to institute proceedings.
- 292. Petition or other application.
 - (1). In general.
 - (2). Form and requisites.
 - (3). Number and qualification of petitioners.
 - (4). Signature by agent or other representative.
 - (5). Withdrawal of consent.
- 293. Preliminary resolution or other action on application.
 - (1). In general.
 - (2). Description of improvement.
 - (3). As to necessity of improvement.
 - (4). Making of resolution.
- 294. Notice of proposed improvement or resolution.
 - (5). In general.
 - (1). Statutory provisions.
 - (2). Necessity.
 - (3). Form, requisites, and validity in general.
 - (4). Description of improvement.
 - (5). Persons served or entitled to notice.
 - (6). Time of notice in general.
 - (7). Service, publication, and posting.
 - (8). Return or proof of service or publication.
- 295. Reference or submission to particular officer or board.
- 296. Preliminary investigations and estimates.
 - (1). In general.
 - (2). Estimate of cost of improvement.
- 297. Remonstrances or objections.
 - (1). In general.
 - (2). Withdrawal of protest.
- 298. Hearing of persons interested.
- 299. Determination as to necessity and utility of improvement.
- 300. Ordinance, resolution, or order for improvement.
- 300.1. — In general.
- 301. — Necessity.
- 302. — Making and approval.
 - (1). In general.
 - (2). At special meeting.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (3). Number of votes in absence of petition.
- (4). Publication.
- 303. — Form, requisites, and validity in general.
 - (1). In general.
 - (2). Resolution or ordinance.
 - (3). Declaration of necessity and utility of improvement.
 - (4). Partial invalidity.
- 304. — Description of improvement and specification as to material and work.
 - (1). In general.
 - (2). Streets and other ways.
 - (2.1). — In general.
 - (3). — Establishment of grade.
 - (4). — Description of street or portion thereof to be improved.
 - (5). — Designation of materials.
 - (6). — Catch-basins, curbing, and guttering.
 - (7). — Sidewalks.
 - (8). — Repairs.
 - (9). Sewers, drains, and water courses.
 - (10). Reference to other ordinances or to plans and specifications.
 - (11). Improvements authorized or required by ordinance.
 - (12). Variance between notice or petition and ordinance or order.
 - (13). Variance from preliminary resolution or estimate.
 - (14). Provisions as to time and mode of doing work.
- 305. — Provisions as to contracts for work.
- 306. — Provisions for defraying expenses and for levy of assessment.
- 307. Appointment of commissioners, officers, or committee to direct improvement.
- 308. Order or permission for making of improvement by property owners.
- 309. Grant of franchise or privilege in general.
- 310. Annulment of ordinance, resolution, or order.
- 311. Amendment of ordinance, resolution, or order.
- 312. Repeal of ordinance, resolution, or order.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- 313. Discontinuance of proceedings or abandonment of improvement.
- 314. Surveys, plans and specifications.
 - (1). In general.
 - (2). Change of plan.
- 315. Estimates of cost of work ordered.
- 316. Defects and objections.
- 317. Persons who may question validity of proceedings.
- 318. Waiver of objections.
- 319. Estoppel to attack proceedings.
- 320. Curative statutes and ordinances.
- 321. Review of proceedings.
 - (.5). In general.
 - (1). Right to review in general.
 - (1.1). — In general.
 - (2). — As to necessity or utility.
 - (3). Appeal or exceptions.
 - (4). Certiorari.
- 322. Compelling making of improvement.
- 323. Restraining making of improvement.
 - (1). In general.
 - (2). Defects in preliminary proceedings.
 - (3). Proceedings.
- 324. Collateral attack on proceedings.
- 325. Conclusiveness, operation, and effect of proceedings.

(C) CONTRACTS.

- 326. In general.
- 327. Constitutional and statutory provisions.
- 328. Authority to contract in general.
- 329. Necessity for special contract.
- 330. Necessity for submission to competition.
 - (1). In general.
 - (2). Power to let contract without submission to competition or to dispense with requirements.
 - (3). Conditions and restrictions on bidders in general.
 - (4). Provisions for monopolized or patented articles or materials.
- 331. Request or advertisement for proposals or bids.
- 332. Form and requisites of proposals or bids.
- 333. Deposit or other security on making proposal or bid.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 334. Acceptance or rejection of proposals or bids.
- 335. — In general.
 - 335.1. — Time for opening bids and making award; withdrawal of bids.
 - 335.2. — Reconsideration.
- 336. — Award to lowest bidder.
 - (1). In general.
 - (2). Form and requisites of bids.
 - (3). Consideration of reliability and responsibility of bidders.
 - (4). Consideration of character of materials and mode of doing work.
 - (5). Operation and effect of award.
- 337. Failure of bidder to enter into contract.
- 338. Formal requisites of contract.
- 339. Validity and sufficiency in general.
 - (1). In general.
 - (2). Conformity to estimates, specifications, and request for bid.
 - (3). Guaranties, indemnity, and stipulations for repairs.
 - (4). Single contracts including different improvements.
 - (5). Separate contracts for parts of improvements.
- 340. Conformity to provisions of charter, act, or ordinance authorizing improvement.
- 341. Effect of defects in preliminary proceedings.
- 342. Approval by council or other body or officer.
- 343. Advances and deposits by contractors.
- 344. Contractors' bonds.
 - 344.1. — In general.
- 345. — Necessity and power to require.
- 346. — Requisites and validity.
- 347. — Liabilities of sureties.
 - (1). In general.
 - (2). Persons secured.
- 348. — Actions.
- 349. Unauthorized or illegal contracts.
- 350. — In general.
- 351. — Ratification.
- 352. Construction and operation.
- 353. Assignment.
- 354. Modification or rescission.
- 355. Performance of work.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- 356. — In general.
- 357. — Control and inspection of work.
- 358. — Approval or certificate of engineer or other officers.
 - (1). In general.
 - (2). Form and sufficiency of certificate.
 - (3). Conclusiveness and effect.
- 359. — Substantial performance.
- 360. — Alterations and additional or extra work.
 - (1). In general.
 - (2). Order for or consent to extra work.
 - (3). Mistake in or change of plans and specifications or surveys.
 - (4). Necessity for notice, claim, or demand.
 - (5). Waiver of right to extra compensation.
 - (6). Compensation for extra work.
 - (7). Acceptance and approval or certificate as to extra work.
- 361. — Partial performance.
- 362. — Delay.
 - (1). In general.
 - (2). Extension of time for performance or waiver of delay.
- 363. — Defects.
- 364. — Excuses for nonperformance or defects.
- 365. — Acceptance of performance and waiver of defects.
- 366. Completion of work by municipality.
- 367. Completion of work by other contractor or surety.
- 368. Guaranties of work and stipulations for repairs.
- 369. Payment of compensation.
- 370. — In general.
- 371. — From special fund or appropriation.
- 372. — From proceeds of assessments or special taxes.
 - (1). In general.
 - (2). Failure or neglect to levy or collect assessment or issue tax bills.
 - (3). Invalidity or insufficiency of special assessment or tax bills.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 373. Liens for labor and materials.
 - (1). In general.
 - (2). Right to lien.
 - (3). Proceedings to perfect lien.
 - (4). Operation and effect of lien.
 - (5). Assignment of lien or claim.
 - (6). Waiver, loss, or discharge of lien.
 - (7). Enforcement.
- 374. Rights and remedies of contractors and sureties against municipality.
 - (1). In general.
 - (2). Conditions precedent and limitations.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Damages.
 - (6). Trial, judgment, and review.
- 375. Rights and remedies of municipality.
- 376. Rights and remedies of third persons.
- 376.5. Criminal responsibility of contractors.

(D) DAMAGES.

- 377. Nature of liability in general.
- 378. Constitutional and statutory provisions.
- 379. Authority and acts of municipal officers as to making of improvement.
- 380. Accrual of right to damages and effect of abandonment of proceedings or improvement.
- 381. Nature of improvement.
- 382. — In general.
- 383. — Construction, improvement, or repair of streets or other ways.
- 384. — Alteration of course or width of streets.
- 385. — Change of grade of streets.
 - (1). In general.
 - (2). Nature and extent of change.
 - (3). Establishment and legality of street or grade.
 - (4). Change from natural surface.
- 386. — Vacation of streets.
- 387. — Structures and other works in streets.
- 388. — Sewers, drains, and water courses.
- 389. — Parks and other public places.
- 390. Property affected.
- 391. — In general.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- 392. — Location.
- 393. — Injuries to property of person or corporation holding franchise in street.
- 394. Nature of injury and elements of damage.
 - (1). In general.
 - (2). Erection of buildings after adoption of plan for change of grade.
 - (3). Destruction of shade trees.
 - (4). Interference with access.
 - (5). Injury to business or temporary loss of use of property.
 - (6). Removal of lateral support.
 - (7). Cost of grading or otherwise adjusting abutting premises.
- 395. Measure and amount in general.
 - (1). In general.
 - (2). Interest.
 - (3). Mitigation of damages.
- 396. Deduction or set-off of benefits.
- 397. Inadequate or excessive damages.
- 398. Persons entitled.
- 399. Estoppel, waiver, or loss of right.
- 400. Municipalities and persons liable.
- 401. Necessity for assessment and payment before making improvement.
- 402. Proceedings for assessment.
 - (1). In general.
 - (2). Jurisdiction.
 - (3). Notice of proceedings.
 - (4). Time for proceedings.
 - (5). Application and proceedings thereon in general.
 - (6). Appointment and proceedings of commissioners, jury, assessors, or viewers.
 - (7). Report or award and proceedings thereon.
 - (8). Defects and objections and waiver thereof.
 - (9). Review.
 - (10). Costs.
- 403. Payment of award.
- 404. Remedies of owners of property.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Actions for damages.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (3). Conditions precedent, limitations, and laches.
- (4). Parties.
- (5). Pleading.
- (6). Evidence.
- (7). Stay of proceedings.
- (8). Questions for jury.
- (9). Instructions.
- (10). Judgment and review.
- (E) ASSESSMENTS FOR BENEFITS, AND SPECIAL TAXES.**
- 405. Nature of assessment or tax.
- 406. Power to levy in general.
 - (1). In general.
 - (2). Delegation or grant of power by Legislature.
- 407. Constitutional requirements and restrictions.
 - (1). In general.
 - (2). Equality and uniformity.
 - (3). Double taxation.
 - (4). Taxation according to value.
- 408. Statutory provisions.
 - (1). In general.
 - (2). Enactment, amendment, or repeal after order for or construction of improvement.
- 409. Purposes in general.
- 410. Authority to make improvement or expenditure.
 - (1). In general.
 - (2). Existence and validity of way.
 - (3). Improvement encroaching on abutting land.
- 411. Nature of improvement.
- 412. — In general.
- 413. — Construction or improvement of streets or other ways.
 - (1). In general.
 - (2). Crosswalks and intersections.
 - (3). Streets occupied by railroads or used as turnpikes.
 - (4). Retaining walls.
- 414. — Reconstruction or repair of streets.
 - (1). In general.
 - (2). What constitutes original construction or reconstruction.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- (3). Provisions of ordinance or contract for construction of improvement.
- 415. — Change of grade of streets.
- 416. — Alteration or vacation of streets.
- 417. — Sewers, drains, and water courses.
 - (1). In general.
 - (2). Rebuilding and repairing.
- 418. — Water supply, works, and mains.
- 419. — Lighting.
- 420. — Parks and other public places.
- 421. Nature of property liable.
- 421.1. — In general.
- 422. — Private property in general.
- 423. — Unoccupied or unimproved property.
- 424. — Agricultural lands.
- 425. — Railroad property.
 - (1). In general.
 - (2). Depots, yards, and lands in general.
 - (3). Roadbeds and rights of way.
 - (4). Duty under statute, charter, or grant of franchise.
- 426. — Public property.
- 427. Location of property liable.
- 428. — In general.
- 429. — Abutting property.
- 430. — Adjoining or adjacent property.
- 431. — Property abutting on street, but not the part improved.
- 432. — Property liable to assessments for sewers and drains.
- 433. — Property beyond boundaries of municipality.
- 434. Exemptions.
 - (1). In general.
 - (2). Property of religious and charitable institutions.
 - (3). Schools, colleges, and universities.
 - (4). Cemeteries.
 - (5). Homestead.
 - (6). Railroad property.
- 435. Conveyances to evade assessment.
- 436. Benefits to property.
- 436.1. — In general.
- 437. — Necessity.
- 438. — General or special.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 439. — Nature, extent, and amount.
- 440. — Previous existence of similar improvement.
- 441. Property damaged by improvement.
- 442. Agreement, conveyance, or dedication between municipality and owner of property.
- 443. Effect of violation of provisions of charter, act, or ordinance authorizing improvement.
- 444. Effect of defects in proceedings preliminary to improvement.
- 445. Effect of invalidity of or irregularity in contract.
- 446. Effect of nonperformance of contract.
- 447. Necessity of acquisition of property or completion of improvement before assessment.
- 448. Making of or payment for part of improvement by owners of property.
- 449. Ordinance, resolution, or order for levy.
 - (.5). In general.
 - (1). Necessity.
 - (2). Making and approval.
 - (3). Requisites and sufficiency.
 - (4). Construction and operation.
- 450. Assessment or taxing districts.
 - (1). In general.
 - (2). Boundaries and property included.
 - (3). Squares.
 - (4). Proceedings for establishment.
- 451. Authority of council or other board or officer to make assessment.
- 452. Jurisdiction of courts to make assessment.
- 453. Commissioners or others specially appointed to make assessment.
 - (1). In general.
 - (2). Qualifications.
- 454. Proceedings for assessment.
- 455. Notice of proceedings for making of assessment and hearing thereon.
- 456. Mode of assessment in general.
 - (1). In general.
 - (2). Entire tracts or parcels or subdivisions.
 - (3). Assessment on part of tract.
 - (4). Inclusion of different improvements in one assessment.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- 457. Amount of assessment or tax.
- 458. — In general.
- 459. — Statutory limitations.
- 460. — Matters included in expenses of improvement.
- 461. — Final estimate or determination of amount.
- 462. — Variance from preliminary estimate.
- 463. — Excessive amount.
- 464. Apportionment of benefits and expenses of improvement.
- 465. — In general.
- 466. — Benefit to property in general.
- 467. — Value of property.
- 468. — Area of lots or tracts.
- 469. — Frontage of lots in general.
 - (1). In general.
 - (2). Lots varying in depth or value or laid out at acute angle with street.
 - (3). Mode of determining frontage.
 - (4). Assessment of each lot for cost of work done opposite.
- 470. — Corner lots or other lots fronting on more than one street.
- 471. — Deduction of damages.
- 472. — Unequal assessments.
- 473. — Excessive assessments.
- 474. — Omission to enforce assessments or to assess property liable.
- 475. Determining mode and time of payment.
- 476. Form and contents of assessment.
- 477. — In general.
- 478. — Recitals.
- 479. — Description of property, and maps, plats, or diagrams.
- 480. — Designation of owners of property.
- 481. — Designation of amounts assessed.
- 482. — Provisions as to payment and enforcement.
- 483. Assessment rolls, reports, and records.
 - (1). In general.
 - (2). Making and attestation.
 - (3). Return, filing, and recording.
- 484. Presumptions as to validity of assessment and effect as evidence.
 - (1). In general.
 - (2). Conclusiveness.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (3). Evidence impeaching assessment.
- 485. Certificate, bond, warrant, or special tax bill against specific property.
 - (1). In general.
 - (2). Form and contents.
 - (3). Execution, issuance, and registration.
 - (4). Amendment, correction, and issuance of new bills.
 - (5). Conclusiveness and effect as evidence.
- 486. Notice of assessment.
 - (1). In general.
 - (2). Necessity.
 - (3). Form and sufficiency.
 - (4). Time of notice.
 - (5). Service.
 - (6). Publication.
 - (7). Return and proof of notice.
- 487. Persons who may question validity of assessment.
- 488. Estoppel or waiver as to defects or objections.
 - (1). In general.
 - (2). Provisions of or recitals in conveyance or lease of land.
 - (3). Petition for improvement.
 - (4). Acquiescence in work in general.
 - (5). Failure to make or urge objections or to resort to legal remedies.
 - (5.1). — In general.
 - (6). — Establishment and boundaries of assessment district.
 - (7). — Irregularities in letting or performance of contract.
 - (8). — Apportionment of benefits and expenses of improvement.
 - (9). Payment of assessment or portion thereof.
 - (10). Accepting benefit of improvement.
- 490. Remedies of owners of property in general.
- 491. Objections and exceptions to assessment and hearing thereon in general.
- 492. Amendment or correction by officers making assessment.
- 493. Confirmation or revision of assessment by municipal council or board.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- (1). In general.
- (2). Proceedings.
- (3). Effect of pendency of appeal to city council.
- (4). Vacation or disapproval and new assessment.
- (5). Amending, vacating, or setting aside order.
- (6). Conclusiveness and effect of order.
- 494. Revision by jury.
- 495. Jurisdiction of courts as to assessment in general.
- 496. Confirmation or revision of assessment by court.
- 496.1. — In general.
- 497. — Grounds of objection.
- 498. — Jurisdiction.
- 499. — Notice of proceeding.
- 500. — Petition or other application.
- 501. — Objections or answer, and subsequent pleadings.
- 502. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 503. — Scope of inquiry and powers of court.
- 504. — Hearing or trial in general.
- 505. — Trial by jury.
- 506. — Confirmation, modification, or annulment of assessment.
- 507. — Judgment or order.
- 508. — Review.
 - (.5). In general.
 - (1). Appeal and error.
 - (1.1). — In general.
 - (2). — Right of review and requisites and proceedings for transfer of cause.
 - (3). — Parties on appeal.
 - (4). — Presentation and reservation in lower court of grounds of review.
 - (5). — Scope and contents of record.
 - (6). — Extent of review.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (7). — Determination and effect thereof.
- (8). Certiorari.
- 509. — Costs.
- 510. — Operation and effect of confirmation.
- 511. Appeal from assessment.
 - (.5). In general.
 - (1). Right to appeal and questions reviewable.
 - (2). Proceedings and relief.
- 512. Certiorari to review assessment.
 - (1). In general.
 - (2). Time for proceedings.
 - (3). Proceedings and relief.
- 513. Actions to enjoin or set aside assessment.
 - (1). In general.
 - (2). Prevention of cloud on title.
 - (3). Existence of legal or statutory remedy.
 - (4). Conditions precedent to action.
 - (5). Time to sue, limitations, and laches.
 - (6). Parties.
 - (7). Pleading and evidence.
 - (8). Hearing, determination, and relief.
 - (9). Appeal.
- 514. New or further assessment.
 - (.5). In general.
 - (1). Reassessments in general.
 - (1.1). — In general.
 - (2). — Grounds for reassessment.
 - (3). — Determination of invalidity of prior assessment.
 - (4). — Statutory provisions.
 - (5). — Effect of payment or enforcement of prior assessment.
 - (6). Adjustment of arrearages.
 - (7). Additional assessments in general.
 - (7.1). — In general.
 - (8). — Effect of invalidity of former assessment.
 - (9). Time for making new assessment.
 - (10). Notice of relevy or new assessment.
 - (11). Levy, amount, and apportionment of new assessment.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- (11.1). — In general.
- (12). — Confirmation and review.
- 515. Curative statutes and ordinances.
 - (.5). In general.
 - (1). Legislative action.
 - (2). Municipal action.
- 516. Collateral attack.
- 517. Operation and effect in general.
- 518. Interest.
 - (1). In general.
 - (2). Reassessments.
- 519. Lien and priority.
 - (1). In general.
 - (2). Perfecting and filing.
 - (2.1). — In general.
 - (3). — Form and sufficiency of claim.
 - (4). — Amendment of claim.
 - (5). Commencement and duration of lien.
 - (6). Priority.
 - (7). Effect of claim as evidence.
- 520. Payment and disposition.
- 521. — In general.
- 522. — Installments.
- 523. Refunding or recovery of assessment or tax paid.
 - (1). In general.
 - (2). Grounds for and objections to recovery in general.
 - (3). Payment by mistake or in ignorance of grounds of objection.
 - (4). Payment under protest.
 - (5). Actions.
- 524. Penalties for nonpayment.

(F) ENFORCEMENT OF ASSESSMENTS AND SPECIAL TAXES.

- 525. Nature and mode of proceeding in general.
- 526. Constitutional requirements and restrictions.
- 527. Statutory provisions.
- 528. Authority of collectors and other officers.
- 529. Property which may be subjected.
- 530. Time for enforcement in general.
- 531. Certification and warrant for collection.
- 532. Precept.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 533. Demand.
- 534. Restraining enforcement.
- 535. — In general.
- 536. — Grounds.
- 537. — Payment or tender of amount due.
- 538. — Proceedings.
- 539. Proceedings for sale of land as delinquent.
 - 540. — In general.
 - 541. — Certificate of delinquency.
 - 542. — Delinquent list.
 - 543. — Publication or other notice.
- 544. Summary judgment or order for sale of land.
 - 544.1. — In general.
- 545. — Nature of proceeding.
- 546. — Defenses and objections.
 - (1). In general.
 - (2). Irregularity in preliminary proceedings.
 - (3). Contract and performance of work.
 - (4). Irregularity in assessment in general.
 - (5). Amount and apportionment of assessment.
 - (6). Form and sufficiency of objection.
- 547. — Jurisdiction.
- 548. — Time for application.
- 549. — Parties.
- 550. — Notice.
- 551. — Petition or other application.
- 552. — Answer and subsequent pleadings.
- 553. — Evidence.
- 554. — Hearing or trial.
- 555. — Judgment or order and enforcement thereof.
- 556. — Review.
- 557. Actions for sale of land.
 - 557.1. — In general.
- 558. — Nature and form.
- 559. — Right of action of municipality.
- 560. — Right of action of contractor or assignee.
- 561. — Conditions precedent.
- 562. — Defenses.
 - (1). In general.
 - (2). Set-off or counterclaim in general.

268. MUNICIPAL CORPORATIONS**IX. PUBLIC IMPROVEMENTS.(Cont'd)**

- (3). Damages caused by construction of improvement.
- 563. — Jurisdiction.
- 564. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 565. — Parties.
- 566. — Process.
- 567. — Pleading.
 - (.5). In general.
 - (1). Petition or complaint.
 - (1.1). — In general.
 - (2). — Averments as to preliminary proceedings and contracts.
 - (3). — Pleading ordinances or orders for improvement.
 - (4). Answer or affidavit of defense.
 - (5). Reply.
 - (6). Issues, proof, and variance.
- 568. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 569. — Trial or hearing.
- 570. — Judgment or decree.
 - (1). In general.
 - (2). Relief granted.
 - (3). Opening and vacating.
- 571. — Review.
- 572. — Costs.
- 573. Sale of land.
- 574. — In general.
- 575. — Manner, conduct, and validity.
- 576. — Report or return, and record.
- 577. — Certificate of sale.
- 578. — Confirming, vacating, or setting aside.
- 579. — Title and rights of purchaser.
- 580. — Purchase by municipality and re-sale.
- 581. — Redemption.
- 582. — Conveyance to purchaser.
- 583. — Operation and effect.
- 584. — Proceeds of sale.
- 585. Enforcement against personal property.
- 586. Personal liability and enforcement thereof.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 587. Enforcement in collateral proceedings.
- 588. Wrongful enforcement.

X. POLICE POWER AND REGULATIONS.**(A) DELEGATION, EXTENT, AND EXERCISE OF POWER.**

- 589. Nature and scope of power of municipality.
- 590. Delegation of power of state.
- 591. Delegation of power by municipality.
- 592. Concurrent and conflicting exercise of power by state and municipality.
 - (1). In general.
 - (2). Acts prohibited and punishable under both general law and municipal ordinance.
 - (3). Different punishment, penalty, or license fee prescribed by ordinance.
 - (4). Ordinances permitting acts which state law prohibits.
- 593. Surrender or restriction of power by contract or license.
- 594. Ordinances and regulations in general.
 - (1). In general.
Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.
 - (3). Uncertainty as to penalty.
 - (4). Persons bound by ordinances and regulations.
 - (5). Disorderly houses.
 - (6). Gaming.
- 595. Public safety and welfare.
- 596. Public peace and order.
- 597. Public health.
- 598. Public morals.
- 599. Protection of property.
- 600. Use of property in general.
See also ZONING AND PLANNING.
- 601. Building regulations.
See also ZONING AND PLANNING.
 - 601.1. — In general.
 - 601.2. — Matters subject to regulation.
 - 601.3. — Validity of building regulations.
- 602. Billboards, signs, and other structures or devices for advertising purposes.
See also ZONING AND PLANNING. Limited to content and message; for structure and placement, see HIGHWAYS §153.5 and ZONING AND PLANNING §1111, 1271, 1392.

268. MUNICIPAL CORPORATIONS**X. POLICE POWER AND REGULATIONS.(Cont'd)**

- 603. Prevention of and protection against fire.
- 604. Keeping and use of animals.
- 605. Nuisances in general.
- 606. Smoke and offensive or noxious odors.
- 607. Removal and disposition of garbage, refuse, and filth.
See also ENVIRONMENTAL LAW VIII.
- 608. Removal of dead animals.
- 609. Burial and transportation of dead bodies.
- 610. Regulation of occupations and employments.
- 611. — In general.
- 613. — Mechanical trades and pursuits.
- 614. — Vehicles and means of transportation.
- 615. — Mercantile business in general.
- 616. — Dealings in particular articles.
- 617. — Special privileges.
- 618. — Corporate franchises and privileges.
- 619. — Charges and prices.
- 620. Exercise of power in general.
- 621. Permits.
See also ZONING AND PLANNING.
- 622. Prohibitory ordinances.
See also ZONING AND PLANNING.
- 623. Abatement of nuisances.
 - (1). In general.
 - (2). Expense of abatement and assessments therefor.
 - (3). Surrender of property assessed.
 - (4). Actions.
- 624. Power to punish violations of regulations.
- 625. Reasonableness of regulations.
See also ZONING AND PLANNING. Excludes review by courts (see 63, ante).
- 626. Discrimination.
See also ZONING AND PLANNING.
- 627. Invasion of private rights in general.
- 628. Destruction of or injury to property.
- 629. Impounding of animals.

(B) VIOLATION AND ENFORCEMENT OF REGULATIONS.

- 630. Nature and elements of offenses in general.

X. POLICE POWER AND REGULATIONS.(Cont'd)

- 631. Acts or omissions constituting violations of regulations.
 - (1). In general.
 - (2). Buildings regulations.
 - (3). Keeping and use of animals.
- 632. Defenses.
- 633. Fines and penalties and civil actions or proceedings therefor.
 - (1). In general.
 - (2). Nature of proceeding.
 - (3). Jurisdiction.
 - (4). Pleading.
 - (5). Joinder and splitting of causes.
 - (6). Evidence.
 - (7). Trial, judgment, and review.
 - (8). Costs.
- 634. Criminal prosecutions.
- 635. — In general.
- 636. — Jurisdiction, venue, and limitations.
- 637. — Preliminary proceedings.
- 638. — Summary trial.
- 639. — Complaint, indictment, information, affidavit, or warrant.
 - (1). In general.
 - (2). Pleading ordinance.
 - (3). Person by whom made.
 - (4). Verification, signing, and filing.
 - (5). Amendment.
- 640. — Evidence.
- 641. — Trial, judgment, and record.
- 642. — Review.
 - (1). In general.
 - (2). Right of municipality to review.
 - (3). Record and proceedings for transfer.
 - (4). Hearing and determination.
- 643. — Sentence and punishment.
- 644. — Costs.
- 645. Civil liability.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.**(A) STREETS AND OTHER PUBLIC WAYS.**

- 646. Establishment in general.

268. MUNICIPAL CORPORATIONS**XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)**

- 647. Existence before incorporation or annexation of territory.
- 648. Establishment by prescription, user, or recognition.
- 649. Establishment by statute or statutory proceedings.
- 650. General plan and maps or plats.
- 651. Plats by landowners.
- 651.5. Names of streets.
- 652. Proceedings to determine existence or location.
- 653. Pleading existence.
- 654. Evidence as to existence or location.
- 655. Alteration of course or width.
- 656. Change of grade.
- 657. Vacation or abandonment.
 - (1). In general.
 - (2). Power to vacate or discontinue.
 - (3). Abandonment or nonuser.
 - (4). Petition, consent, or remonstrance of property owners.
 - (5). Proceedings.
 - (6). Review.
 - (7). Operation and effect.
- 658. Title and rights of municipality in general.
- 659. Use by municipality for purposes other than highway.
- 660. Power to control and regulate.
- 661. — In general.
 - (1). In general.
 - (2). Reasonableness and validity of regulations in general.
 - (3). Regulation of use by corporations holding franchise.
- 662. — Municipal boards or officers.
- 663. Title and rights of abutting owners in general.
 - (1). In general.
 - (2). Ownership on vacation.
 - (3). Right to soil, trees, or other materials in roadway.
- 664. Privileges of and restrictions on abutting owners.
- 665. — In general.
- 667. — Structures or projections on or over street.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- 668. — Excavations, vaults, and other structures below street.
- 669. — Access to and use of roadway.
- 670. — Use of sidewalk.
- 671. — Rights and remedies as to obstructions or improper use of roadway.
 - (.5). In general.
 - (1). Injuries from obstruction.
 - (1.1). — In general.
 - (2). — Nature and extent.
 - (3). — Defenses.
 - (4). — Actions.
 - (5). Abatement and injunction.
 - (5.1). — In general.
 - (6). — Adequacy of remedy at law.
 - (7). — Nature and extent of injury.
 - (8). — Defenses.
 - (9). — Proceedings and relief.
 - (10). Grants or licenses by city interfering with rights of abutting owners.
- 672. Work on streets by inhabitants, and poll taxes.
- 673. Cleaning streets.
- 674. Sprinkling streets.
- 675. Removal of snow and ice or other obstructions.
- 676. — In general.
- 677. — Sidewalks.
- 678. Trees, parking, and other ornamentation.
- 679. Grant of rights to use street for purposes other than highway.
- 679.1. — In general.
- 680. — Power to grant franchises and privileges in general.
 - (1). In general.
 - (2). Power of particular officers or boards.
 - (3). Nature of purpose in general.
 - (4). Gas, water, or other underground conduits.
 - (5). Poles and wires.
 - (6). Railroads.
 - (7). Street railroads.
 - (8). Private use.
- 682. — Mode and extent of use.

268. MUNICIPAL CORPORATIONS**XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)**

- (1). In general.
- (2). Exclusive and conflicting grants.
- (3). Duration of grant.
- (4). Power to impose conditions.
- 683. — Making, requisites, and validity of grant or license.
 - (1). In general.
 - (2). Sale of franchise.
 - (3). Bond for compliance with franchise or permit.
- 684. — Construction and operation in general.
- 685. — Nature and extent of right.
- 686. — Exclusive grant or license.
- 687. — Conflicting grants or licenses.
- 688. — Effect on subsequent exercise of power of municipality.
- 689. — Right to question validity.
 - (1). In general.
 - (2). Judicial control and review of acts of municipality.
- 690. — Revocation or forfeiture.
- 691. Obstructions and encroachments.
- 691.1. — In general.
- 692. — Obstruction of use.
- 693. — Buildings or other structures constituting encroachment.
- 695. — Ejectment.
- 696. — Removal.
- 697. — Action for abatement or injunction.
 - (1). In general.
 - (2). Suit by private person.
 - (3). Parties.
 - (4). Proceedings and relief.
- 698. — Actions for damages.
- 699. — Penalties and actions therefor.
- 700. — Criminal responsibility.
- 701. Use as highway.
- 701.1. — In general.
- 702. — Application of law of the road.
- 703. — Mode of use and regulation thereof in general.
 - (1). In general.
 - (2). Processions and unusual noises and performances in streets.
 - (3). Stopping and standing in streets.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- (4). Regulations as to speed.
- (5). Weight of loads.
- 704. — Use of sidewalk.
- 705. — Liabilities for injuries from negligent or other wrongful use.
 - (1). In general; care required.
 - (2). Mutual rights and duties as to meeting and crossing or overtaking and passing.
 - (3). Care required as to children.
 - (4). Violation of statute or ordinance.
 - (5). Rate of speed.
 - (6). Stopping or standing in street.
 - (7). Horses and animals not under control and runaways.
 - (8). Vicious propensities of animals driven or led in street.
 - (9). Frightening animals.
 - (10). Contributory negligence.
 - (11). Proximate cause of injury.
 - (12). Persons liable.
- 706. — Actions for damages for negligent or other wrongful use.
 - (5). In general.
 - (1). Pleading.
 - (2). Issues, proof, and variance.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Sufficiency of evidence.
 - (6). Questions for jury.
 - (6.1). — In general.
 - (7). — Contributory negligence.
 - (8). Instructions.
 - (9). Verdict and findings.
 - (10). Damages.
- 707. — Offenses incident to travel.
- (B) SEWERS, DRAINS, AND WATER COURSES.**
- 708. Establishment in general.
- 709. Sewers and drains existing before incorporation or annexation of territory.
- 710. Private sewers and drains.
- 711. Power to control and regulate.
- 712. Connections with sewers or drains.
 - (1). In general.

268. MUNICIPAL CORPORATIONS**XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.**(Cont'd)

- (2). Contracts relating to use of sewer system.
- (3). Right or obligation to connect; fees.
- (3.1). — In general.
- (4). — Nonresidents.
- (5). — Compelling connection.
- (6). — Extension of lines.
- (7). Sewer service fees.
- (8). Sewer rates.
- (9). Judicial proceedings.
- 713. Manner of use.
- 714. Natural water courses.
- 715. Surface water.
- (C) PUBLIC BUILDINGS, PARKS, AND OTHER PUBLIC PLACES AND PROPERTY.**
- 716. Buildings for governmental purposes.
- 717. Buildings and structures for use of public in general.
- 718. Means of public transportation and communication.
- 719. Water frontage, landings, wharves, and docks.
 - (1). In general.
 - (2). Powers of particular officers.
 - (3). Exaction and regulation of wharfage.
 - (4). Leases and grants of franchises and privileges.
 - (5). Purpose of grant.
 - (6). Ownership of land.
 - (7). Accretion and batture.
- 720. Markets and market places, stands, and stalls.
- 721. Parks and public squares and places.
 - (1). In general.
 - (2). Prevention of improper use or obstruction.
 - (3). Grants of rights to use public property.
 - (4). Forfeiture of lease or grant.
- 722. Grants of rights to use public property in general.

XII. TORTS.**(A) EXERCISE OF GOVERNMENTAL AND CORPORATE POWERS IN GENERAL.**

- 723. Nature and grounds of liability.
- 723.5. Constitutional and statutory provisions.
- 724. Governmental powers in general.
- 725. Corporate powers in general.
- 726. Duties imposed with consent or for benefit of municipality.
- 727. Duties absolutely imposed.
- 728. Discretionary powers and duties.
- 729. Undertakings for pecuniary profit.
- 730. Acts authorized by charter or statute.
- 731. Performance of authorized acts in unauthorized or unlawful manner.
- 732. Acts ultra vires in general.
- 733. Construction and maintenance of public improvements and works in general.
 - (1). In general.
 - (2). Construction and repair of streets and sewers.
 - (3). Lighting plants.
 - (4). Waterworks.
- 734. Establishment and maintenance of public institutions.
- 735. Failure to enact or enforce ordinances or regulations.
- 736. Nuisances.
- 737. Trespass.
- 738. Conversion.
- 739. Destruction of property.
 - (1). In general.
 - (2). Failure to protect private property against fire.
- 740. Injuries by mobs or other wrongdoers.
 - (1). In general.
 - (2). Conduct of person injured and notice of apprehended danger.
- 741. Notice or presentation of claims for injury.
 - 741.10. — In general.
 - 741.15. — Necessity and purpose.
 - 741.20. — Requirement as mandatory or condition precedent.
 - 741.25. — Applicability in particular cases.
 - 741.30. — Service or presentation; time therefor.
 - 741.35. — Effect of delay or failure to give.

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- 741.40. — Excuses for, and relief from, delay or failure.
- (1). In general.
 - (2). Infancy.
 - (3). Physical or mental incapacity.
- 741.45. — Amendment; new notice or claim.
- 741.50. — Form and sufficiency.
- 741.55. — Waiver and estoppel.
- 741.60. — Action by council on claim.
742. Actions.
- (1). In general.
 - (2). Parties.
 - (3). Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Trial, judgment, and review.
743. Damages.

(B) ACTS OR OMISSIONS OF OFFICERS OR AGENTS.

744. Liability of officers or agents.
745. Application of principle of agency to municipalities.
- 745.5. Performance of governmental or corporate functions in general.
746. Employment of incompetent agents or servants.
747. Particular officers and official acts.
- (1). In general.
 - (2). Public works and improvements.
 - (3). Police and fire.
 - (4). Health and education.
748. Exercise of rights or privileges granted by municipality.
749. Performance of contracts with municipality.
750. — In general.
751. — Independent contractors and their employees.
- (1). In general.
 - (2). Stipulations as to duties and liabilities.
 - (3). Contracts to be performed under supervision of city.
752. Performance of duties to or services for others than municipality.
753. Scope of authority or employment.

XII. TORTS.(Cont'd)

- (1). In general.
 - (2). Pleading and evidence.
754. Ratification or repudiation.
- (C) DEFECTS OR OBSTRUCTIONS IN STREETS AND OTHER PUBLIC WAYS.**
755. Nature and grounds of liability.
- (1). In general.
 - (2). Liability implied from power or duty to construct, maintain, and control.
756. Statutory provisions.
757. Duty to construct or repair streets and other ways.
- (1). In general.
 - (2). Duty imposed on abutting owner.
 - (3). Duty imposed on private corporations.
 - (4). Lack of funds for making repairs.
758. Streets and other ways as to which municipality is liable.
759. — In general.
- (1). In general.
 - (2). Establishment or existence of street in general.
 - (3). Establishment by user or recognition.
 - (4). Abandonment of street.
 - (5). Unopened, unimproved, or partially improved streets or ways.
760. — Lanes, alleys, and courts.
761. — Sidewalks, footways, and crosswalks.
- (1). In general.
 - (2). Sidewalks built by abutting owners or other third persons.
 - (3). Walks outside limits of street.
762. Cause of or responsibility for defects, obstructions, or dangerous conditions.
- (1). In general.
 - (2). Acts or omissions of private persons or corporations.
 - (3). Failure to prevent or permitting improper use of street.
763. Care required as to condition of way.
- (1). In general.
 - (2). Care dependent on number, extent, and use of streets or sidewalks.

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- (3). Time allowed for making repairs or removing obstructions.
- 764. Sufficiency and safety of way in general.
 - (1). In general.
 - (2). Sufficiency for particular vehicles or modes of use.
 - (3). Width of driveway or sidewalk.
- 765. Nature of defects.
- 766. — In general.
- 767. — Construction or condition of roadway.
- 768. — Construction or condition of sidewalk, footway, or crosswalk.
 - (1). In general.
 - (2). Defect in plan of construction.
 - (3). Depressions and inequalities in surface.
 - (4). Steps or abrupt slopes.
- 769. Water, snow, and ice.
- 770. — In general.
- 771. — Sidewalk, footway, or crosswalk.
- 772. — Accumulation caused by or accompanying defects or other concurring causes.
- 773. — Removal.
- 774. Obstructions.
- 775. — In general.
- 776. — Roadway.
- 777. — Sidewalk, footway, or crosswalk.
- 778. Falling objects.
- 778.5. — In general.
- 779. — Structures or projections over street.
- 780. — Buildings or other structures adjacent to street.
- 781. Objects frightening animals in street.
- 782. Embankments, excavations, and openings.
- 783. — In general.
- 784. — Roadway.
- 785. — Sidewalk, footway, or crosswalk.
- 786. Property adjacent to street.
- 787. Notice of defect or obstruction.
- 788. — In general.
- 788.1. — Unsafe condition caused by, or under control of municipality.
- 788.2. — Defect in construction or repair.
- 789. — Hidden or latent defects.

XII. TORTS.(Cont'd)

- 790. — To municipal officers, agents, or private citizens.
- 791. — Constructive notice.
 - (1). In general.
 - (2). Time of existence of defect or obstruction.
 - (3). Notice of general condition or particular defect.
 - (4). Known causes likely to produce defect.
 - (4.1). — In general.
 - (5). — Tendency of wood to decay.
- 792. — Notice of ice or snow.
- 793. Precautions against injury.
- 794. — In general.
- 795. — Inspection.
- 796. — Barriers, or covering or guarding dangerous places.
- 797. — Lights in general.
- 798. — Notices, warning signals, or lights.
- 799. — Precautions while making improvements.
- 800. Proximate cause of injury.
 - (1). In general.
 - (2). Concurrent causes in general.
 - (3). Ice or snow.
 - (4). Fright of or accident to horses.
 - (5). Negligence or wrongful act of third person.
 - (6). Intervening causes.
- 801. Rights of person injured in general.
 - (1). In general.
 - (2). Improper use of street.
 - (3). Injury to person responsible for defect.
- 802. Contributory negligence.
- 802.1. — In general.
- 803. — Care required in general.
 - (1). In general.
 - (2). Traveling in nighttime in general.
- 804. — Care required of children and others under disability.
- 805. — Knowledge of defect or danger.
 - (.5). In general.
 - (1). Precautions against known dangers in general.
 - (2). Use of defective driveway or sidewalk.

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XII. TORTS.(Cont'd)

- (3). Traveling in nighttime with knowledge of danger.
- (4). Extent of knowledge.
- (5). Relation of knowledge to cause of injury.
- (6). Inadvertence or momentary forgetfulness.
- (7). Disregarding warnings or signals.
- (8). Constructive notice.
- 806. — Duty to observe defect or danger.
 - (1). In general.
 - (2). Right to assume that street is free from defects.
 - (3). Nature of defect or obstruction and opportunity to observe same.
 - (4). Traveling in nighttime.
- 807. — Choice of ways.
 - (1). In general.
 - (2). Leaving traveled portion of way.
 - (3). Pedestrian leaving sidewalk or crosswalk.
- 808. Liabilities of abutting owners.

Liabilities as between landlord and tenant, see LANDLORD AND TENANT §167; liabilities for injuries from acts or objects on adjacent premises, see NEGLIGENCE §1071, 1152; joint and several liability of city and abutting owner, see §814; and indemnity to municipality, see INDEMNITY.

 - (1). In general.
 - (2). Obstructions on sidewalk or driveway.
 - (3). Openings in, or excavations under, sidewalk.
 - (4). Failure to construct or repair.
 - (5). Injuries caused by ice or snow.
 - (6). Right and title of defendant.
 - (7). Violation of ordinance or regulation.
 - (8). Permission of municipality.
 - (9). Notice of dangerous condition.
- 809. Liabilities of persons causing defects or obstructions.
 - (1). In general.
 - (2). Contractors.
- 810. Actions for injuries.
- 810.1. — In general.
- 811. — Grounds and conditions precedent in general.
- 812. — Notice of claim for injury.

XII. TORTS.(Cont'd)

- (1). In general.
- (2). Necessity.
- (3). To abutting owner or person causing defect.
- (4). Statutory provisions.
- (5). Waiver.
- (6). Form and sufficiency.
- (6.1). — In general.
- (7). — Time, place, cause, and nature of injury.
- (8). Verification or proof.
- (9). Service or presentation.
- (10). Failure to give notice and excuse therefor.
- (11). Amendment or new notice.
- 813. — Time to sue and limitations.

See also LIMITATION OF ACTIONS.
- 814. — Parties.
- 815. — Process.
- 816. — Pleading.
 - (5). In general.
 - (1). Declaration, complaint, or petition in general.
 - (2). Allegations as to duty and liability of defendant in general.
 - (3). Location and nature of defect.
 - (4). Notice of defect or obstruction.
 - (5). Notice or presentation of claim for injury.
 - (6). Negating contributory negligence or other fault.
 - (7). Answer.
 - (8). Issues and proof.
 - (8.1). — In general.
 - (9). — General issue.
 - (10). Variance between allegations and proof.
 - (11). Variance between notice of claim and pleading or proof.
- 817. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of accident or injury.
 - (3). Contributory negligence.
- 818. — Admissibility of evidence.
 - (1). In general.
 - (2). Negligence of defendant in general.

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- (3). Condition of way and nature of defect or obstruction.
- (4). Notice of defect in general.
- (5). Contributory negligence.
- (6). Condition of way prior to accident.
- (7). Condition subsequent to accident.
- (8). Condition at other places and existence of similar defects.
- (9). Other accidents at same place.
- (10). Ordinances, resolutions, or other action by municipality.
- (11). Subsequent repairs or precautions against injury.
- (12). Evidence as to notice of claim or demand.
- 819. — Sufficiency of evidence.
 - (1). In general.
 - (2). Snow and ice.
 - (3). Excavations and precautions against injury therefrom.
 - (4). Cause of injury.
 - (5). Existence or location of street.
 - (6). Notice of defect.
 - (7). Contributory negligence.
 - (8). Notice of claim.
- 820. — Conduct of trial in general.
- 821. — Questions for jury.
 - (1). In general.
 - (2). Existence of street for which municipality is responsible.
 - (3). Negligence of defendant in general.
 - (4). Sufficiency and safety of way in general.
 - (5). Construction or condition of roadway.
 - (6). Construction or condition of sidewalk, footway, or crosswalk.
 - (7). Snow and ice.
 - (8). Obstructions.
 - (9). Falling objects.
 - (10). Objects frightening animals in street.
 - (11). Excavations and openings in driveway or sidewalk.
 - (12). Precautions against injury.
 - (12.1). — In general.

XII. TORTS.(Cont'd)

- (13). — Barriers or guards in general.
- (14). — Lights and warnings.
- (15). Notice of defect or obstruction.
- (15.1). — In general.
- (16). — Constructive notice.
- (17). Negligence of abutting owner.
- (18). Negligence of person causing defect or obstruction.
- (19). Proximate cause of injury.
- (20). Contributory negligence in general.
 - (20.1). — In general.
- (21). — Of children or others under disability.
- (22). — Traveling in nighttime.
- (23). Knowledge by person injured of defect or danger.
 - (23.1). — In general.
- (24). — Traveling in nighttime.
- (25). Duty of person injured to observe defect or obstruction.
- (26). Choice of ways by person injured.
- (27). Sufficiency of notice of claim for injury.
- 822. — Instructions.
 - (.5). In general.
 - (1). Form, requisites, and subject-matter in general.
 - (2). Care of way and negligence of defendant.
 - (3). Notice to defendant of defect or obstruction.
 - (4). Contributory negligence.
 - (5). Applicability to pleadings and evidence.
- 823. — Verdict and findings.
- 824. — Judgment.
- 825. — Appeal and error.
- 826. — Costs.
- (D) DEFECTS OR OBSTRUCTIONS IN SEWERS, DRAINS, AND WATER COURSES.**
- 827. Nature and grounds of liability.
 - (1). In general.
 - (2). Sewers or drains as to which liability extends.
 - (3). Degree of care required.

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- 828. Statutory provisions.
- 829. Duty to construct sewers and drains.
- 830. Sufficiency of sewers and drains in general.
- 831. Defects in sewers or drains.
 - (.5). In general.
 - (1). Defects in plan of sewers and drains.
 - (2). Defects in construction.
- 832. Defects or obstructions after construction of sewer or drain.
- 833. Defective connection with sewer or drain.
- 834. Obstruction or diversion of water course.
- 835. Obstruction or diversion of flow of surface water.
- 836. Discharge of sewage.
- 837. — In general.
- 838. — Pollution of streams or other waters.
- 839. Notice of defect.
- 840. Proximate cause of injury.
- 841. Right to relief in general.
- 842. Contributory negligence.
- 843. Negligence or other fault of third persons.
- 844. Liabilities of persons causing defects or obstructions.
- 845. Actions for injuries.
 - (.5). In general.
 - (1). Nature of remedy and notice or presentation of claim.
 - (2). Parties and pleading.
 - (3). Issues, proof, and variance.
 - (4). Evidence.
 - (5). Questions for jury.
 - (6). Instructions and verdict and findings.
 - (7). Damages.
- 846. Abatement and injunction.

(E) CONDITION OR USE OF PUBLIC BUILDINGS AND OTHER PROPERTY.

- 847. Nature and grounds of liability of municipality as proprietor.
- 848. Buildings in general.
- 849. Water frontage, landings, wharves, and docks.
- 850. Markets and market places.

XII. TORTS.(Cont'd)

- 851. Parks and public squares and places.
- 852. Vehicles, apparatus, machinery, and appliances.
- 853. Vessels and boats.
- 854. Proximate cause of injury.
- 855. Contributory negligence.
- 856. Negligence or other fault of third persons.
- 857. Actions for injuries.

XIII. FISCAL MATTERS.**(A) POWER TO INCUR INDEBTEDNESS AND EXPENDITURES.**

- 858. Nature and scope of power.
- 859. Constitutional and statutory provisions.
- 860. Purposes of appropriations or expenditures in general.
- 861. Municipal purposes.
- 862. Limitation of amount.
- 863. — In general.
- 864. — Debts and expenditures subject to limitation.
 - (1). In general.
 - (2). Current expenses.
 - (3). Public improvements, property, and works.
 - (4). Indebtedness payable out of special fund or from special assessment.
 - (5). Debts incurred in anticipation of collection of taxes.
 - (6). Executory contracts.
 - (7). Torts.
- 865. — Computation of limit or amount.
 - (1). In general.
 - (2). Expenditures and indebtedness included.
 - (3). Value of taxable property.
- 866. Exercise of power in general.
- 867. Submission of question of expenditure to popular vote.
 - (1). In general.
 - (2). Debts and expenditures which must be submitted.
 - (3). Calling, conduct, and result of election.
 - (4). Operation and effect.
- 868. Requirement of provision for payment.
 - (1). In general.

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- (2). Contracts for water and lighting.
- (3). Certificate as to funds.
- 869. Borrowing money.
- 870. Limitation on use of funds or credit in general.
- 871. Donations, gratuities, and charitable purposes.
- 872. Aid to corporations, and subscription to or purchase of corporate stock.
- 873. — In general.
- 874. — Submission of question to popular vote.
- 875. — Requisites and validity.
- 876. — Construction and operation.
- 877. — Rights and liabilities of municipality.
- 878. Unauthorized debts and expenses.

(B) ADMINISTRATION IN GENERAL, APPROPRIATIONS, WARRANTS, AND PAYMENT.

- 879. Administration of finances in general.
- 880. Collection and custody of funds.
- 881. Adjustment of accounts with state.
- 882. Adjustment of accounts with county or other municipalities.
- 883. Disbursements in general.
- 884. Loaning or investment of funds.
- 885. Reports and statements as to finances.
- 886. General funds.
- 887. Special funds.
- 888. Apportionment of funds.
- 889. Appropriations.
- 889.1. — In general.
- 890. — Making and requisites.
- 891. — Operation and effect.
- 892. — Transfer or diversion.
- 893. Priorities.
- 894. Payment of indebtedness in general.
- 895. Warrants and certificates of indebtedness.
- 896. — In general.
- 897. — Power and duty to issue.
- 898. — Issuance, requisites, and validity.
- 899. — Construction and operation in general.
- 900. — Amount.
- 901. — Interest.
- 902. — Negotiability and transfer.

XIII. FISCAL MATTERS.(Cont'd)

- 903. — Surrender for reissue, funding, or redemption.
- 904. — Payment.
 - (1). In general.
 - (2). Priorities and order of payment.
- 905. — Remedies.

(C) BONDS AND OTHER SECURITIES, AND SINKING FUNDS.

- 906. Nature of power to issue securities.
- 907. Constitutional and statutory provisions.
- 908. Issuance and validity of bills and notes.
- 909. Purposes of issue of bonds.
- 910. — In general.
- 911. — Public improvements.
- 912. — Aid to corporations, and subscription to or purchase of corporate stock.
- 913. — Funding or refunding indebtedness.
- 914. Limitation of amount of bonds.
- 915. — In general.
- 916. — Particular purposes.
- 917. Proceedings preliminary to issue of bonds.
 - (1). In general.
 - (2). Determination of validity.
- 918. Submission of question of issue of bonds to popular vote.
 - (1). In general.
 - (2). Ordinance or resolution for election and form of submission.
 - (3). Application for and notice of election.
 - (4). Conduct and record of election.
 - (5). Operation and effect of election.
- 919. Provision for payment or redemption of bonds.
- 920. Authority of officers or agents.
- 921. Sale or other disposition of bonds by municipality.
 - (1). In general.
 - (2). Allowance of commission.
 - (3). Proceeds of sale.
- 922. Form and contents of bonds.
- 923. — In general.
- 924. — Necessary recitals.
- 925. — Provisions as to payment.
- 926. — Provisions as to interest and coupons.

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- 927. Execution of bonds.
- 928. Issuance and delivery of bonds.
- 929. — In general.
- 930. — Fulfillment of conditions.
- 931. Validity of bonds in general.
- 932. Ratification of invalid bonds.
- 933. — In general.
- 934. — Payment of principal or interest.
- 935. Curative statutes and ordinances.
- 936. Registration of bonds.
- 937. Rights of payees or original purchasers in general.
- 938. Negotiability and transfer of securities.
- 939. Rights and liabilities on transfer of securities in general.
- 940. Bona fide purchasers.
- 940.1. — In general.
- 941. — Good faith in general.
- 942. — Constructive notice, and facts putting on inquiry.
- 943. — Effect of recitals in bonds.
 - (1). In general.
 - (2). Power to issue.
 - (3). Performance of conditions precedent to issue and regularity thereof.
 - (4). Limitation of indebtedness.
 - (5). Purpose of issue and consideration.
- 944. — Effect of recitals in municipal records.
- 945. — Effect of official decisions, certificates, and affidavits.
- 946. — Consideration.
- 947. — Purchasers from bona fide holders.
- 948. — Defenses as against bona fide holders.
 - (1). In general.
 - (2). Invalidity of statute under which bonds were issued.
 - (3). Want of authority to issue.
 - (4). Fraud or irregularity in exercise of power.
 - (5). Want or failure of consideration and collateral agreements.
 - (6). Bonds exceeding limit of indebtedness.
 - (7). Improper use of proceeds.

XIII. FISCAL MATTERS.(Cont'd)

- 949. Rights and remedies of holders of invalid securities.
- 950. Bonds secured by special assessment or fund.
 - (1). In general.
 - (2). Trust-fund doctrine in general.
 - (3). Validity of bonds.
 - (4). Validity of contract to collect.
 - (5). Negotiability of bonds.
 - (6). Liability of municipality for acts or omissions affecting recovery by bondholder in general.
 - (7). Depletion of funds collected.
 - (8). Excessive assessments.
 - (9). Negligence and misconduct of officers and agents.
 - (10). Payment where fund is insufficient to pay all bonds.
 - (11). Penalties for nonpayment of assessments.
 - (12). Prepaid assessments.
 - (13). Priorities.
 - (14). Purchase of property by city at foreclosure sale.
 - (15). Revenue-producing enterprises.
 - (16). Time for payment of bonds.
- 951. Sinking funds and redemption.
- 952. Payment.
- 953. — In general.
- 954. — Interest and coupons.
- 955. Actions.
 - (.5). In general.
 - (1). Rights of action and defenses.
 - (1.1). Time to sue, limitations and laches.
 - (1.5). Parties.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial and judgment.
- (D) TAXES AND OTHER REVENUE, AND APPLICATION THEREOF.**
- 956. Power and duty to tax in general.
 - (1). In general.
 - (2). Limitation of rate or amount in general.
 - (3). Mode of taxation.
 - (4). Submission to popular vote.

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- 957. Constitutional requirements and restrictions.
 - (.5). In general.
 - (1). Power to tax for general or special purposes in general.
 - (2). Delegation of power by Legislature.
 - (3). Limitations as to rate or amount, or property or persons taxable.
 - (4). Submission to voters, and levy, assessment, and collection.
- 958. Charter and other statutory provisions.
- 959. Power to tax for general municipal purposes.
- 960. Power to tax for special purposes.
- 961. — In general.
- 962. — Public improvements.
- 963. — Aid to corporations and subscriptions to or purchase of stock.
- 964. — Payment of indebtedness.
- 965. — Sinking funds.
- 966. Persons and property taxable.
 - (1). In general.
 - (2). Property outside of city limits.
 - (3). Property of nonresidents in general.
 - (4). Annexed territory and agricultural and unplatted lands.
 - (5). Money and choses in action.
 - (6). Bank stock and property.
 - (7). Railroad property.
 - (8). Bridge and water companies.
 - (9). Property taxable by state.
- 967. Exemptions from taxation.
 - (1). In general.
 - (2). Power to exempt in general.
 - (3). Annexed territory and agricultural lands.
 - (4). Railroad property.
 - (5). Property of water and electric companies.
- 968. Proceedings for levy in general.
 - (.5). In general.
 - (1). Conditions precedent.
 - (2). Time of levy.
- 969. Ordinances or resolutions levying taxes.
 - (1). In general.
 - (2). Publication.

XIII. FISCAL MATTERS.(Cont'd)

- (3). Construction and operation.
- (4). Certification and review.
- 970. Assessment of taxes.
- 971. — In general.
 - (1). In general.
 - (2). Authority and duty to make assessment.
 - (3). Assessment of omitted property.
 - (4). Defects and irregularities.
- 972. — Mode of assessment.
 - (1). In general.
 - (2). Basis of assessment.
 - (3). Description, ownership, and valuation.
 - (4). Statement or list by taxpayer.
 - (5). Verification, certification, and warrant.
 - (6). Publication and deposit for inspection.
- 973. — Conclusiveness and effect.
- 974. — Review, correction, or setting aside.
 - (.5). In general.
 - (1). Authority to correct and grounds for correction.
 - (2). Mode of action and proceedings.
 - (3). Confirmation and review.
- 975. Lien of taxes.
- 976. Payment of taxes.
- 977. Refunding or recovery of tax paid.
- 978. Collection and enforcement of taxes in general.
 - (.5). In general.
 - (1). Collectors and proceedings for collection in general.
 - (2). Contracts for collection of taxes.
 - (3). Nature and form of remedy in general.
 - (4). Sale of property.
 - (5). Conditions precedent.
 - (6). Rights of action and defenses.
 - (7). Time to sue and limitations.
 - (8). Parties.
 - (9). Pleading and evidence.
 - (10). Trial, judgment, and execution.
- 979. Remedies for wrongful collection of tax.
- 980. Sale or lease of land for nonpayment of tax.

268. MUNICIPAL CORPORATIONS**XIII. FISCAL MATTERS.**(Cont'd)

- (.5). In general.
- (1). Power to sell and grounds for sale.
- (2). Restraining or setting aside sale.
- (3). Proceedings for and validity of sale or lease in general.
- (4). Notice.
- (5). Mode and conduct of sale and disposition of proceeds.
- (6). Sale of the fee or for a term of years.
- (7). Purchase by city.
- (8). Quantity which may be sold.
- (9). Rights and remedies of purchaser.
- 981. Redemption from tax sale.
- 982. Tax titles.
- 983. Forfeitures and penalties for nonpayment of tax.
- 984. Disposition for municipal purposes of taxes and other revenue.
- 985. — In general.
- 986. — Taxes for special purposes.

XIV. TAXPAYERS' SUITS AND OTHER REMEDIES.

- 987. Nature and scope in general.
- 988. Constitutional and statutory provisions.
- 989. Investigation of municipal finances.
- 990. Contesting validity of municipal ordinances or acts.
- 991. Restraining action by municipality or officers.
- 992. — In general.
- 993. — Unauthorized or illegal acts.
 - (1). In general.
 - (2). Making and performance of unauthorized or illegal contracts.
 - (3). Issuance or delivery of bonds.
 - (4). Levy and disposition of taxes.
- 994. — Incurring indebtedness or expenditure.
- 995. — Misapplication of funds.
 - (1). In general.
 - (2). Payment of claims, bonds, or warrants.
- 996. — Waste or other disposition of or injury to property.
- 997. Compelling action by municipality or officers.

XIV. TAXPAYERS' SUITS AND OTHER REMEDIES.(Cont'd)

- 998. Intervention in actions by or against municipality.
- 999. Suing or defending on behalf of municipality.
- 1000. Actions.
 - (.5). In general.
 - (1). Abatement or dismissal of action and defenses.
 - (2). Conditions precedent in general.
 - (3). Requesting city officers to bring action.
 - (4). Parties.
 - (5). Pleading and evidence.
 - (6). Trial, judgment, and relief.
 - (7). Costs.

XV. CLAIMS AGAINST CORPORATION.

- 1001. Nature of claims required to be presented.
- 1002. Interest.
- 1003. Assignment.
- 1004. Auditing boards or officers.
- 1005. Time for presentation.
- 1006. Statement.
- 1007. Verification and proof.
- 1008. Presentation and filing.
- 1009. Authority to allow.
- 1010. Compromise.
- 1011. Arbitration.
- 1012. Audit or hearing.
- 1013. Decision.
- 1014. Review of decision.
- 1015. Effect of allowance or disallowance.

XVI. ACTIONS.

- 1016. Capacity to sue or be sued in general.
- 1017. Rights of action.
- 1018. Compromise and settlement of litigation.
- 1019. Conditions precedent.
- 1020. — In general.
- 1021. — Notice, demand or presentation of claim.
- 1023. Defenses.
- 1024. Jurisdiction and venue.
- 1025. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 1026. Authority to sue in corporate name.

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XVI. ACTIONS.(Cont'd)

- 1027. Parties.
- 1028. Joinder or intervention in actions by others.
- 1029. Process.
- 1030. Appearance and representation by attorney.
- 1031. Attachment and garnishment.
- 1032. Injunction.
- 1033. Receiver.
- 1034. Pleading.
- 1035. Evidence.
- 1036. Trial.
- 1037. Judgment.
- 1038. Execution and enforcement of judgment.
- 1039. Appeal and error.
- 1040. Costs.

XVII. CRIMINAL RESPONSIBILITY.

- 1041. Nature and grounds in general.
- 1042. Particular offenses.
- 1043. Prosecutions.

269. NAMES

SUBJECTS INCLUDED

Appellations and designations of individuals
Rights of a personal nature respecting their use
Change of name

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Changes of name incident to—
 Adoption, see ADOPTION
 Divorce, see DIVORCE
Nonmarital children, names of, see PARENT AND CHILD ¶123
Names of—
 Associations, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV

Corporate bodies, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Partnerships, see PARTNERSHIP

Property in names, see TRADEMARKS

- 1. Requisites and sufficiency.
- 2. — In general.
- 3. — Middle names.
- 4. — Prefixes and suffixes.
- 5. — Abbreviations.
- 6. — Initials.
- 7. — Derivations and corruptions.
- 8. Mode of conferring or acquiring.
- 9. — In general.
- 10. — Assumed names.
- 11. — Names in common use.
- 12. Distinction of sex.
- 14. Identity.
- 15. Distinguishing persons having same name.
- 16. Idem sonans.
 - (1). In general.
 - (2). Names within rule.
 - (3). Names not within rule.
- 17. Right to use.
- 18. Evidence.
- 19. Questions for jury.
- 20. Change.
- 21. Offenses in use of names.

271. NE EXEAT

SUBJECTS INCLUDED

Proceedings to prevent defendants in actions on demands of an equitable nature from departing or removing their property from the jurisdiction of the court, and to obtain equitable bail
Nature and scope of writs of ne exeat and similar remedies
In what cases and against whom such remedy is allowed, grounds for the writ, and jurisdiction over proceedings to obtain the writ, etc.
Requisites and sufficiency of the writ, bond, etc.

272. NEGLIGENCE

Execution of the writ
Dissolution of the writ, or discharge of the party from custody thereunder

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arrest and bail in general, see ARREST, BAIL
Particular classes of actions, use of writ in, see ACCOUNT, DIVORCE
Review of decisions, see APPEAL AND ERROR

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Grounds.
4. Jurisdiction to issue.
5. Proceedings to procure.
6. — In general.
7. — Affidavits.
8. — Bond.
9. Issuance, form, and requisites.
10. Service, and custody of prisoner.
11. Equitable bail.
12. Vacating or discharge.
13. Return.
14. Liabilities on bonds.
15. Wrongful arrest or restraint.

272. NEGLIGENCE

SUBJECTS INCLUDED

General civil negligence law and premises liability, including duty, standards of care, breach of duty, proximate cause, injury, defenses, and comparative fault, whether based on the common law or statute, as well as procedural aspects of such actions
General civil liabilities for gross negligence, recklessness, willful or wanton conduct, strict liability and ultrahazardous instrumentalities and activities
Negligence liabilities relating to the construction, demolition and repair of buildings and other structures, whether based on the common law or statute

General criminal negligence offenses and prosecutions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Accountants or auditors, negligence of, see ACCOUNTANTS ¶8, 9
Aircraft, accidents involving, see AVIATION V
Asylums and assisted living facilities, see ASYLUMS AND ASSISTED LIVING FACILITIES
Attorneys' malpractice liability, see ATTORNEYS AND LEGAL SERVICES X
Awards of compensatory or punitive damages for injuries to persons or property caused by negligence, see DAMAGES
Banks, liabilities of, see FINANCE, BANKING, AND CREDIT IV
Brokers, securities and real estate, liabilities of, see BROKERS
Car and highway accidents, see AUTOMOBILES
Child day care, injuries relating to, see INFANTS
Common carriers, liabilities to passengers, see CARRIERS
Domestic animals, injuries by or to, see ANIMALS
Dram Shop liability and other liabilities for serving alcohol, see ALCOHOLIC BEVERAGES VI
Drugs, liabilities relating to manufacture, sale and dispensing of, see HEALTH ¶389, 706 and PRODUCTS LIABILITY ¶223
Educational institutions and personnel, liabilities of, see EDUCATION
Electricity-related injuries, see ELECTRICITY ¶12–19(13)
Elevators, liabilities of owners to passengers, see CARRIERS
Emotional distress, negligent infliction of, see DAMAGES III(A)2
Employers, liabilities for acts committed by their employees or for negligent hiring or retention of employees, see LABOR AND EMPLOYMENT XVIII
Employers, liabilities for injuries to their own employees, see LABOR AND EMPLOYMENT

272. NEGLIGENCE

Exculpatory clauses prospectively waiving negligence liability, see **CONTRACTS** ¶114, 189

Explosion, fireworks and blasting injuries, see **EXPLOSIVES** ¶6–12

Firearms, injuries inflicted with, see **WEAPONS** ¶361 et seq

Flooding others' lands or polluting others' water supply, see **WATER LAW**

Food, injuries caused by, see **FOOD** ¶25

Governments, negligence liability of, see **COUNTIES, DISTRICT OF COLUMBIA, MUNICIPAL CORPORATIONS, STATES, TOWNS, TERRITORIES, and UNITED STATES**

Homicide by negligence, see **AUTOMOBILES and HOMICIDE**

Hospitals, liabilities of, see **HEALTH V**

Hotels, motels, inns and boarding houses, liabilities of, see **INNKEEPERS** ¶10–11(12), 14.1

Insurers, liabilities of, see **INSURANCE and WORKERS' COMPENSATION**

Lease of personal property, liabilities relating to, see **BAILMENT**

Lease of real property, liabilities relating to, see **LANDLORD AND TENANT**

Manufacture, sale or distribution of products, liabilities relating to, see **PRODUCTS LIABILITY and SALES**

Maritime accidents and injuries, see **ADMIRALTY, COLLISION, FERRIES, PILOTS, SALVAGE, SEAMEN, SHIPPING and WHARVES**

Medical malpractice and liabilities of health care professionals in general, see **HEALTH V and VI**

Mines and quarries, injuries in excavation and operation of, see **MINES AND MINERALS** ¶118

Natural gas and propane, injuries from escape or explosion of, see **GAS** ¶14.50–20(6)

Negligence as measure of criminal intent generally, see **CRIMINAL LAW** ¶23

Negligent misrepresentation, see **FRAUD** ¶13(3)

Nursing homes, injuries in, see **HEALTH**

Pesticides, herbicides, and fertilizers in an agricultural context, liabilities involving, see **AGRICULTURE**

Railroads, liabilities to non-passengers, see **RAILROADS and URBAN RAILROADS**

Release from liability after injury, see **COMPROMISE, SETTLEMENT, AND RELEASE**

Security personnel and private investigators, see **DETECTIVES AND SECURITY GUARDS** ¶4

Spoliation of evidence, see **TORTS III(D)**

Sports and public amusements, liabilities of proprietors, managers, and sponsors, see **PUBLIC AMUSEMENT AND ENTERTAINMENT**

Wrongful death actions, procedural aspects of, see **DEATH**

I. IN GENERAL, ¶200–205.

II. NECESSITY AND EXISTENCE OF DUTY, ¶210–222.

III. STANDARD OF CARE, ¶230–239.

IV. BREACH OF DUTY, ¶250–259.

V. HEIGHTENED DEGREES OF NEGLIGENCE, ¶272–276.

VI. VULNERABLE AND ENDANGERED PERSONS; RESCUES, ¶281–285.

VII. SUDDEN EMERGENCY DOCTRINE, ¶291–295.

VIII. DANGEROUS SITUATIONS AND STRICT LIABILITY, ¶301–307.

IX. TRADES, SPECIAL SKILLS AND PROFESSIONS, ¶321–323.

X. SPORTS, GAMES AND RECREATION, ¶331–333.

XI. FIRES, ¶341–344.

XII. NEGLIGENT ENTRUSTMENT, ¶351–355.

XIII. PROXIMATE CAUSE, ¶370–454.

XIV. NECESSITY AND EXISTENCE OF INJURY, ¶460–463.

XV. PERSONS LIABLE, ¶480–484.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES, ¶500–575.

XVII. PREMISES LIABILITY, ¶1000–1320.

(A) IN GENERAL, ¶1000–1004.

(B) NECESSITY AND EXISTENCE OF DUTY, ¶1010–1025.

(C) STANDARD OF CARE, ¶1030–1079.

(D) BREACH OF DUTY, ¶1085–1162.

(E) ATTRACTIVE NUISANCE DOCTRINE, ¶1172–1178.

(F) RECREATIONAL USE DOCTRINE AND STATUTES, ¶1191–1197.

(G) LIABILITIES RELATING TO CONSTRUCTION, DEMOLITION AND REPAIR, ¶1201–1205(10).

272. NEGLIGENCE**XVII. PREMISES LIABILITY—Cont'd**

- (H) STATUTORY CAUSES OF ACTION FOR POLICE AND FIRE-FIGHTERS, ¶1210.
 - (I) PROXIMATE CAUSE, ¶1220–1247.
 - (J) NECESSITY AND EXISTENCE OF INJURY, ¶1250–1251.
 - (K) PERSONS LIABLE, ¶1260–1269.
 - (L) DEFENSES AND MITIGATING CIRCUMSTANCES, ¶1280–1320.
- XVIII. ACTIONS, ¶1500–1750.**
- (A) IN GENERAL, ¶1500–1508.
 - (B) PLEADING, ¶1510–1542.
 - (C) EVIDENCE, ¶1550–1685.
 - 1. BURDEN OF PROOF, ¶1550–1573.
 - 2. PRESUMPTIONS AND INFERENCES, ¶1575–1604.
 - 3. RES IPSA LOQUITUR, ¶1610–1625.
 - 4. ADMISSIBILITY, ¶1630–1642.
 - 5. WEIGHT AND SUFFICIENCY, ¶1650–1685.
 - (D) QUESTIONS FOR JURY AND DIRECTED VERDICTS, ¶1691–1719.
 - (E) INSTRUCTIONS, ¶1720–1747.
 - (F) VERDICT AND FINDINGS, ¶1750.
- XIX. CRIMINAL NEGLIGENCE, ¶1800–1809.**

I. IN GENERAL.*Premises liability, see section XVII(A).*

- 200. Nature.
- 201. Distinction or relationship between negligence and intentional conduct.
- 202. Elements in general.
- 203. Constitutional, statutory and regulatory provisions.
- 204. What law governs.
- 205. Preemption.

II. NECESSITY AND EXISTENCE OF DUTY.*Premises liability, see section XVII(B).*

- 210. In general.
- 211. Public policy concerns.
- 212. Knowledge or notice.
- 213. Foreseeability.
- 214. Relationship between parties.
- 215. Balancing and weighing of factors.
- 216. Duty towards children.
- 217. Voluntarily assumed duty.
- 218. — In general.
- 219. — Contractual duty.
- 220. Protection against acts of third persons.

II. NECESSITY AND EXISTENCE OF DUTY.(Cont'd)

- 221. Duty to warn.
- 222. Duty based upon statute or other regulation.

III. STANDARD OF CARE.*Premises liability, see section XVII(C).*

- 230. In general.
- 231. Due care.
- 232. Ordinary care.
- 233. Reasonable care.
- 234. Voluntarily assumed duties.
- 235. Things owned, controlled, supplied or repaired.
- 236. Custom or practice in general.
- 237. Care towards children.
- 238. Standard established by statute or regulation.
- 239. Intoxication or other impairment of defendant.

IV. BREACH OF DUTY.*Premises liability, see section XVII(D).*

- 250. In general.
- 251. Knowledge or notice.
- 252. Miscellaneous particular cases.
- 253. Things owned, controlled, supplied or repaired.
- 254. Lack of or inadequate warning.
- 255. Protection against acts of third persons generally.
- 256. Injuries to children.
- 257. — In general.
- 258. — Protection against acts of third persons.
- 259. Violations of statutes and other regulations.

V. HEIGHTENED DEGREES OF NEGLIGENCE.

- 272. In general.
- 273. Gross negligence.
- 274. Reckless conduct.
- 275. Willful or wanton conduct.
- 276. Particular cases.

VI. VULNERABLE AND ENDANGERED PERSONS; RESCUES.

- 281. In general.
- 282. Duty in general.

272. NEGLIGENCE**VI. VULNERABLE AND ENDANGERED PERSONS; RESCUES.**(Cont'd)

- 283. Care required in general.
- 284. "Good Samaritan" doctrine and statutes.
- 285. Particular cases.

VII. SUDDEN EMERGENCY DOCTRINE.

- 291. In general; nature of emergency.
- 292. Adoption, existence or abolition of doctrine.
- 293. Self-created emergencies.
- 294. Care required.
- 295. Particular cases.

VIII. DANGEROUS SITUATIONS AND STRICT LIABILITY.

- 301. In general.
- 302. Knowledge of danger.
- 303. Elements of strict liability.
 - (1). In general.
 - (2). Custody or control.
 - (3). Defect, vice or unreasonable risk.
- 304. Miscellaneous particular strict liability.
- 305. Abnormally or inherently dangerous activities and instrumentalities.
- 306. Dangerous substances.
- 307. Dangerous objects and machinery.

IX. TRADES, SPECIAL SKILLS AND PROFESSIONS.

Excludes specific professions for which there are independent Key Number topics, e.g., ACCOUNTANTS, ATTORNEYS AND LEGAL SERVICES, BROKERS and HEALTH.

- 321. In general.
- 322. Care required in general.
- 323. Travel and tour professionals.

X. SPORTS, GAMES AND RECREATION.

Liabilities of proprietors, managers and sponsors, see PUBLIC AMUSEMENT AND ENTERTAINMENT.

- 331. In general.
- 332. Golf.
- 333. Baseball and softball.

XI. FIRES.

- 341. In general.
- 342. Fires accidentally started.
- 343. Spread of fires beyond intended limits.
- 344. Campfires, bonfires and cooking fires.

XII. NEGLIGENT ENTRUSTMENT.

- 351. In general.
- 352. Elements in general.
- 353. Control over object.
- 354. Knowledge of danger.
- 355. Particular cases.

XIII. PROXIMATE CAUSE.

Premises liability, see section XVII(I).

- 370. In general.
- 371. Necessity of causation.
- 372. Necessity of legal or proximate causation.
- 373. Necessity of and relation between factual and legal causation.
- 374. Requisites, definitions and distinctions.
- 375. — In general.
- 376. — Mixed considerations.
- 377. — Common sense and experience.
- 378. — Public policy considerations.
- 379. — "But-for" causation; act without which event would not have occurred.
- 380. — Substantial factor.
- 381. — Proximity and relation in general.
- 382. — Proximity in time or place.
- 383. — Remoteness and attenuation; mere condition or occasion.
- 384. — Continuous sequence; chain of events.
- 385. — Efficient or direct cause.
- 386. — Natural and probable consequences.
- 387. — Foreseeability.
- 400. Miscellaneous particular cases.
- 401. Things owned, controlled, supplied or repaired.
- 402. Injuries to children.
- 403. Vulnerable and endangered persons; rescues and emergencies.
- 404. Dangerous instrumentalities and substances.
- 405. Strict liability.
- 406. Fires.
- 407. Negligent entrustment.
- 408. Protection against acts of third persons.
- 409. Violations of statutes or other regulations.
- 410. Failure to act; omissions.
- 411. — In general.
- 412. — Particular cases.

272. NEGLIGENCE**XIII. PROXIMATE CAUSE.(Cont'd)**

- 413. — Failure to warn or inadequate warning.
- 414. — Failure to inspect or inadequate inspection.
- 420. Concurrent causes.
- 421. — In general.
- 422. — Possibility of multiple causes.
- 423. — Effect of other causes on liability.
- 424. — Particular cases.
- 430. Intervening and superseding causes.
- 431. — In general; foreseeability of other cause.
- 433. — Intentional or criminal acts.
- 434. — Particular cases.
- 440. — Unavoidable or inevitable accident.
 - (1). In general.
 - (2). Act of God.
 - (3). Particular cases.
- 450. Plaintiff's fault as cause.
- 451. — In general.
- 452. — Necessity of causal connection.
- 453. — Requisites, definitions and distinctions.
- 454. — Particular cases.

XIV. NECESSITY AND EXISTENCE OF INJURY.

Premises liability, see section XVII(J).

- 460. In general.
- 461. Nature of injury.
- 462. Particular cases.
- 463. Economic loss doctrine.

XV. PERSONS LIABLE.

Premises liability, see section XVII(K).

- 480. In general.
- 481. Privity.
- 482. Aid and assistance.
- 483. Vicarious liability.
- 484. Joint and several liability.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.

Premises liability, see section XVII(L).

- 500. In general.
- 501. Plaintiff's conduct or fault.
- 502. — In general.
 - (1). Nature and elements in general.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.(Cont'd)

- (2). Relation to defendant's conduct or fault.
 - (3). Miscellaneous particular cases.
- 503. — Care required in general.
- 504. — Foreseeability; cause to anticipate danger.
- 506. — Knowledge of danger.
 - (1). In general.
 - (2). Relative to that of defendant.
 - (3). Forgetfulness, inattention or distraction.
 - (4). Constructive knowledge.
 - (5). — In general; dangers that should be known.
 - (6). — Duty to look and observe.
 - (7). — Open and obvious dangers.
 - (8). Care required of persons with knowledge; avoidance of danger and voluntary exposure.
 - (9). Availability of alternatives.
- 510. — Emergency situations.
 - (1). In general.
 - (2). Self-created emergencies.
 - (3). Rescues.
 - (4). — In general.
 - (5). — Rescues of persons.
 - (6). — Saving of property.
- 520. — Intentional conduct and heightened degrees of negligence.
- 525. — Violations of law; criminal conduct.
- 530. — Injury avoidable notwithstanding contributory negligence; last clear chance, humanitarian and discovered peril doctrines.
 - (1). In general.
 - (2). Adoption, existence or abolition of doctrine.
 - (3). Particular cases.
- 535. — Diminished capabilities.
 - (1). In general.
 - (2). Age in general.
 - (3). Infants.
 - (4). — In general.
 - (5). — Capacity for contributory fault.
 - (6). — Care required in general.

272. NEGLIGENCE**XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.(Cont'd)**

- (7). — Knowledge or obviousness of danger.
- (8). — Particular cases.
- (9). Advanced age.
- (10). Illness and disability.
- (11). — In general.
- (12). — Physical condition.
- (13). — Mental condition.
- (14). Intoxication.
- (15). Chemical dependency.
- (16). Other particular conditions.
- 540. Fault of third persons.
- 545. Effect of others' fault.
- 546. — In general.
- 547. — As bar to recovery; contributory negligence doctrine.
- 549. — As grounds for apportionment; comparative negligence doctrine.
 - (1). In general.
 - (2). Adoption, existence or abolition of doctrine.
 - (3). Purpose of doctrine.
 - (4). Scope and application of doctrine.
 - (5). — In general; prerequisites.
 - (6). — Nature of conduct to which doctrine applies; what constitutes "fault".
 - (7). — Heightened degrees of negligence and intentional acts.
 - (8). — Whose acts or fault may be considered; non-parties.
 - (9). — Determination of relative fault.
 - (10). — Effect of determination on recovery; methods of apportionment.
 - (11). Particular cases and percentages.
- 550. Assumption of risk.
- 551. — In general.
- 552. — Existence as defense.
 - (1). In general.
 - (2). Willful, wanton or reckless conduct.
 - (3). Actions based on statute or regulation.
 - (4). Effect of comparative negligence.
- 553. — Relation to contributory negligence.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.(Cont'd)

- 554.1. — Elements in general.
- 554.2. — Knowledge of danger.
- 554.3. — Voluntariness of action or consent.
- 554.4. — Primary assumption of risk.
- 554.5. — Secondary assumption of risk.
- 554.6. — Primary and secondary distinguished.
- 560. — Miscellaneous particular cases.
- 565. — Sports, games and recreation.
- 570. — Professional rescuers; "firefighter's rule".
- 575. Imputed contributory negligence.

XVII. PREMISES LIABILITY.

Injuries directly caused by fires, see section XI and
 ⚡1178.

(A) IN GENERAL.

- 1000. Nature.
- 1001. Elements in general.
- 1002. Constitutional, statutory and regulatory provisions.
- 1003. What law governs.
- 1004. Preemption.

(B) NECESSITY AND EXISTENCE OF DUTY.

- 1010. In general.
- 1011. Ownership, custody and control.
- 1012. Conditions known or obvious in general.
- 1013. Conditions created or known by defendant.
- 1014. Foreseeability.
- 1015. Duty as to children.
- 1016. — In general.
- 1017. — Trespassing children.
- 1018. Duty to inspect or discover.
- 1019. Protection against acts of third persons in general.
- 1020. Duty to warn.
- 1021. Duty of store and business proprietors.
- 1022. — In general.
- 1023. — Duty to inspect.
- 1024. — Protection against acts of third persons.
- 1024.5. Off-premises injuries.

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XVII. PREMISES LIABILITY.(Cont'd)

- 1024.6. — In general.
- 1024.7. — Adjacent public ways.
Defects in sidewalks or other public ways, see MUNICIPAL CORPORATIONS ¶808 and *HIGHWAYS* ¶199; *automobile accidents, see AUTOMOBILES* ¶269, 289.
1025. Duty based on statute or other regulation.
- (C) STANDARD OF CARE.**
1030. In general.
1031. Not insurer or guarantor.
1032. Reasonable or ordinary care in general.
1033. Reasonably safe or unreasonably dangerous conditions.
1034. Status of entrant.
1035. — In general.
1036. — Care dependent on status.
1037. — Invitees.
- (1). In general.
- (2). Who are invitees.
- (3). Not insurer as to invitees.
- (4). Care required in general.
- (5). Public invitees in general.
- (6). Implied invitation.
- (7). Persons working on property.
Construction site injuries, see section XVII(G).
- (8). Delivery persons and haulers.
1040. — Licensees.
- (1). In general.
- (2). Who are licensees.
- (3). Care required in general.
1041. — Social guests.
1045. — Trespassers.
- (1). In general.
- (2). Who are trespassers.
- (3). Care required in general.
- (4). Knowledge, discovery or acquiescence.
1050. — Distinctions between types of entrants.
1051. — Relative degrees of care.
1052. — Change of status; exceeding scope of invitation or license.
1053. — Rejection of status distinctions.
1060. Police, firefighters and other public servants.
1065. Care as to children.
1066. — In general.
1067. — Trespassing children.

XVII. PREMISES LIABILITY.(Cont'd)

1070. Protection against acts of third persons generally.
1075. Care required of store and business proprietors.
1076. — In general.
1077. — Inspection and discovery.
1078. — Protection against acts of third persons.
- 1078.5. Off-premises injuries.
- 1078.6. — In general.
- 1078.7. — Adjacent public ways.
Covers conditions on the private property causing injury to persons on public ways. For conditions on or defects in the sidewalks or other public ways, see MUNICIPAL CORPORATIONS ¶808 and *HIGHWAYS* ¶199; *for automobile accidents, see AUTOMOBILES* ¶269, 289.
1079. Standard established by statute or other regulation.
- (D) BREACH OF DUTY.**
1085. In general.
1086. Defect or dangerous conditions generally.
1087. Knowledge or notice in general.
1088. — In general.
1089. — Constructive notice.
1090. Miscellaneous particular cases.
1095. Slips and falls in general.
1100. Buildings and structures.
1101. — In general.
1102. — Doors, entryways and exits.
1103. — Windows.
1104. — Floors.
- (1). In general.
- (2). Knowledge of condition or danger.
- (3). Falls in general.
- (4). Inequalities in surface.
- (5). Rugs, carpets and mats.
- (6). Water and other substances.
- (7). Objects and debris.
- (8). Cleaning and waxing.
1110. — Steps, stairs and ramps.
- (1). In general.
- (2). Substances and objects.
- (3). Handrails.
1115. — Walls and paint.
1116. — Roofs and ceilings.
1117. — Elevators and escalators.

272. NEGLIGENCE

Liabilities of owners to passengers, see CARRIERS.

- 1118. — Decks, balconies and patios.
- 1119. — Furniture, shelves, displays, carts and other accessories.
- 1125. Exterior grounds in general.
- 1126. Private walkways and paths.
- 1127. Parking lots and driveways.
- 1128. Trees.
- 1129. Swimming pools.
- 1130. Bodies of water and beaches.
- 1131. Snow and ice.
- 1140. Excavations, holes, drop-offs and shafts.
- 1141. Ladders and scaffolds.
- 1150. Off-premises injuries.
- 1151. — In general.
- 1152. — Adjacent public ways.
Defects in sidewalks or other public ways, see MUNICIPAL CORPORATIONS ¶808 and *HIGHWAYS* ¶199; *automobile accidents, see AUTOMOBILES* ¶269, 289.
- 1160. Protection against acts of third persons.
- 1161. — In general.
- 1162. — Store and business proprietors.

(E) ATTRACTIVE NUISANCE DOCTRINE.

- 1172. In general.
- 1173. Adoption, existence or abolition of doctrine.
- 1174. Persons to whom applicable.
- 1175. Things constituting attractive nuisances in general.
- 1176. Particular cases.
- 1177. Pools and other bodies of water.
- 1178. Fires and flammables.

(F) RECREATIONAL USE DOCTRINE AND STATUTES.

- 1191. In general.
- 1192. Purpose of doctrine or statute.
- 1193. Construction of statutes in general.
- 1194. Property, conditions, activities and persons covered.
- 1195. Charges and fees for use.
- 1196. Duties and care required.
- 1197. Willful or malicious acts; gross negligence.

(G) LIABILITIES RELATING TO CONSTRUCTION, DEMOLITION AND REPAIR.

- 1201. In general.
- 1202. Defects in buildings and structures in general.

XVII. PREMISES LIABILITY.(Cont'd)

- (1). In general.
- (2). Design defects.
- (3). Construction defects.
- 1204. Accidents and injuries in general.
 - (1). In general.
 - (2). Covering or guarding dangerous places.
 - (3). Elevated work in general.
 - (4). Safe workplace laws.
 - (5). — In general.
 - (6). — Scaffolding laws.
 - (7). — Structural work laws.
 - (8). — Frequenter laws.
- 1205. Liabilities of particular persons other than owners or occupiers.
 - (1). In general.
 - (2). Developers and builders.
 - (3). Lenders, financiers and mortgagees.

Non-construction-related liabilities, see ¶1268.

- (4). Architects, designers, and planners.

- (5). Engineers.
- (6). Contractors.
- (7). — In general.
- (8). — Accepted work doctrine.
- (9). Subcontractors.
- (10). Material and equipment suppliers.

(H) STATUTORY CAUSES OF ACTION FOR POLICE AND FIREFIGHTERS.

- 1210. In general.

(I) PROXIMATE CAUSE.

- 1220. In general.
- 1221. Necessity of causation.
- 1222. Necessity of legal or proximate cause.
- 1223. Requisites, definitions and distinctions.
- 1224. Failure to act or warn; omissions in general.
- 1225. Miscellaneous particular cases.
- 1226. Slips and falls in general.
- 1227. Buildings and structures.
- 1228. — In general.
- 1229. — Floors; slips and falls.
- 1230. — Steps, stairs and ramps.
- 1231. — Elevators and escalators.
- 1232. Private walkways and paths.

272. NEGLIGENCE**XVII. PREMISES LIABILITY.(Cont'd)**

- 1233. Parking lots and driveways.
- 1234. Pools, bodies of water and beaches.
- 1235. Snow and ice.
- 1236. Excavations, holes, drop-offs and shafts.
- 1237. Off-premises injuries.
- 1238. Protection against acts of third persons.
- 1239. Violations of statutes and other regulations in general.
- 1240. Liabilities relating to construction, demolition and repair.
- 1241. Concurrent causes.
- 1242. Intervening and superseding causes.
- 1243. Plaintiff's fault as cause.
- 1244. — In general.
- 1245. — Necessity of causal connection.
- 1246. — Requisites, definitions and distinctions.
- 1247. — Particular cases.

(J) NECESSITY AND EXISTENCE OF INJURY.

- 1250. In general.
- 1251. Particular cases.

(K) PERSONS LIABLE.

- 1260. In general.
- 1261. Privity in general.
- 1262. Prior owners.
- 1263. Vendors.
- 1264. Purchasers.
- 1265. Easement holders.
- 1266. Franchisers.
- 1267. Operators and managers.
- 1268. Lenders, financiers and mortgagees.
Construction-related injuries and liabilities, see
§1205(3).
- 1269. Joint and several liability.

(L) DEFENSES AND MITIGATING CIRCUMSTANCES.

- 1280. In general.
- 1281. Plaintiff's conduct or fault.
- 1282. — In general.
- 1283. — Care required.
 - (1). In general.
 - (2). Invitees.
 - (3). — In general.
 - (4). — Store and business visitors.
 - (5). Licensees.
 - (6). Trespassers.

XVII. PREMISES LIABILITY.(Cont'd)

- 1284. — Foreseeability; cause to anticipate danger.
- 1286. — Knowledge of danger.
 - (1). In general.
 - (2). Relative to that of defendant.
 - (3). Forgetfulness, inattention or distraction.
 - (4). Constructive knowledge.
 - (5). — In general; dangers that should be known.
 - (6). — Duty to look and observe.
 - (7). — Open and obvious dangers.
 - (8). Care required of persons with knowledge; avoidance of danger and voluntary exposure.
 - (9). Availability of alternatives.
- 1287. — Miscellaneous particular cases.
- 1288. — Slips and falls in general.
- 1289. — Buildings and structures.
- 1290. — Pools and bodies of water.
- 1291. — Exterior grounds.
 - (1). In general.
 - (2). Private walkways and paths.
 - (3). Parking lots and driveways.
 - (4). Snow and ice.
- 1292. — Injuries inflicted by third persons.
- 1293. — Rescues and emergencies.
- 1294. — Intentional conduct and heightened degrees of negligence.
- 1295. — Violations of law; criminal conduct.
- 1296. — Liabilities relating to construction, demolition and repair.
- 1297. — Injury avoidable notwithstanding contributory negligence; last clear chance, humanitarian and discovered peril doctrines.
- 1298. — Diminished capabilities.
 - (1). In general.
 - (2). Age.
 - (3). Illness and disability.
 - (4). Intoxication and chemical dependency.
- 1300. Fault of third persons.
- 1301. Effect of others' fault.
- 1302. — In general.
- 1303. — As bar to recovery; contributory negligence.

272. NEGLIGENCE**XVII. PREMISES LIABILITY.(Cont'd)**

- 1304. — As grounds for apportionment; comparative negligence.
- 1310. Assumption of risk.
- 1311. — In general.
- 1312. — Existence as defense.
- 1313. — Elements.
- 1314. — Particular cases.
- 1315. — Professional rescuers; “firefighter’s rule”.
- 1320. Imputed contributory negligence.

XVIII. ACTIONS.**(A) IN GENERAL.**

- 1500. In general.
- 1501. Nature and form of remedy.
- 1502. Right of action; standing.
- 1503. Grounds and conditions precedent.
- 1504. — In general.
- 1505. — Notice.
- 1506. — Affidavit or certification of expert.
- 1507. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 1507.1. — In general.
- 1507.2. — Professional negligence or malpractice.
- 1507.3. — Premises liability.
- 1508. Parties.

(B) PLEADING.

- 1510. In general.
- 1511. Complaint.
- 1512. — In general.
- 1513. — Elements of negligence.
 - (1). In general.
 - (2). Duty.
 - (3). Injury.
- 1514. — Res ipsa loquitur.
- 1515. — Miscellaneous particular cases.
- 1516. — Heightened degrees of negligence.
- 1517. — Rescues and emergencies.
- 1518. — Dangerous situations and substances; strict liability.
- 1519. — Trades, special skills and professions.
- 1520. — Sports, games and recreation.
- 1521. — Fires.

XVIII. ACTIONS.(Cont'd)

- 1522. — Negligent entrustment.
- 1523. — Violations of statutes and other regulations.
- 1524. — Premises liability.
 - (1). In general.
 - (2). Slips and falls in general.
 - (3). Buildings and other structures.
 - (4). Pools and bodies of water.
 - (5). Liabilities relating to construction, demolition and repair.
- 1525. — Protection against acts of third persons.
- 1526. — Proximate cause.
- 1527. — Defenses and mitigating circumstances.
 - (1). In general.
 - (2). Fault of plaintiff or third persons.
 - (3). Effect of others’ fault; comparative negligence.
 - (4). Assumption of risk.
- 1528. Answer.
- 1529. — In general.
- 1530. — Defenses in general.
- 1531. — Fault of plaintiff or third persons.
- 1532. — Effect of others’ fault; comparative negligence.
- 1533. — Assumption of risk.
- 1535. Further pleadings.
- 1536. Issues, proof and variance.
- 1537. — In general.
- 1538. — Pleading general issue, allegation or denial.
- 1539. — Pleading specific or multiple acts.
- 1540. — Heightened degrees and intentional acts.
- 1541. — Defenses and mitigating circumstances; contributory and comparative fault.
- 1542. — Other particular cases.

(C) EVIDENCE.**1. BURDEN OF PROOF.**

- 1550. In general.
- 1551. Multiple defendants.
- 1552. Miscellaneous particular cases.
- 1553. Heightened degrees of negligence.
- 1554. Rescues and emergencies.

272. NEGLIGENCE**XVIII. ACTIONS.(Cont'd)**

- 1555. Dangerous situations and substances; strict liability.
- 1556. Trades, special skills and professions.
- 1557. Sports, games and recreation.
- 1558. Fires.
- 1559. Negligent entrustment.
- 1560. Violations of statutes and other regulations.
- 1561. Premises liability.
- 1562. — In general.
- 1563. — Slips and falls in general.
- 1564. — Buildings and other structures.
- 1565. — Pools and bodies of water.
- 1566. — Liabilities relating to construction, demolition and repair.
- 1567. Protection against acts of third persons.
- 1568. Proximate cause.
- 1569. Defenses and mitigating circumstances.
- 1570. — In general.
- 1571. — Fault of plaintiff or third persons.
- 1572. — Effect of others' fault; comparative negligence.
- 1573. — Assumption of risk.

2. PRESUMPTIONS AND INFERENCES.

- 1575. In general.
- 1576. Degree of proof; certainty or speculation.
- 1577. Presumption as to exercise of care.
- 1578. Negligence not presumed.
- 1579. Happening of accident or injury.
- 1580. Knowledge, notice or awareness.
- 1581. Custody or control.
- 1582. Warnings.
- 1583. Miscellaneous particular cases.
- 1584. Heightened degrees of negligence.
- 1585. Rescues and emergencies.
- 1586. Dangerous situations and substances; strict liability.
- 1587. Trades, special skills and professions.
- 1588. Sports, games and recreation.
- 1589. Fires.
- 1590. Negligent entrustment.
- 1591. Violations of statutes and other regulations.
- 1592. Premises liability.
- 1593. — In general.
- 1594. — Slips and falls in general.

XVIII. ACTIONS.(Cont'd)

- 1595. — Buildings and other structures.
- 1596. — Pools and bodies of water.
- 1597. — Liabilities relating to construction, demolition and repair.
- 1598. Protection against acts of third persons.
- 1599. Proximate cause.
- 1600. Defenses and mitigating circumstances.
- 1601. — In general.
- 1602. — Fault of plaintiff or third persons.
- 1603. — Effect of others' fault; comparative negligence.
- 1604. — Assumption of risk.

3. RES IPSA LOQUITUR.

- 1610. In general.
- 1611. Elements or conditions of application.
- 1612. — In general.
- 1613. — Nature and character of accident or injury.
- 1614. — Control or management of instrumentality.
- 1615. — Defendant's superior knowledge or means of knowledge.
- 1616. — Absence or unavailability of direct evidence.
- 1617. — Cause of injury, and parties' relation thereto.
- 1618. Operation and effect of doctrine.
- 1619. — In general.
- 1620. — Creation of inference or presumption.
- 1621. — Burden of proof or going forward.
- 1622. — Sufficiency and effect of rebuttal evidence.
- 1624. Application of doctrine; effect of pleadings.
- 1625. Particular cases.

4. ADMISSIBILITY.

Excludes evidence of subsequent remedial measures, see EVIDENCE §219.10.

- 1630. In general.
- 1631. Custom and usage.
- 1632. Safety codes, standards and guidelines.
- 1633. Contracts and contract provisions.
- 1634. Intoxication.
- 1635. Similar facts and transactions; other accidents.

272. NEGLIGENCE**XVIII. ACTIONS.(Cont'd)**

- 1636. Miscellaneous particular cases.
- 1637. Heightened degrees of negligence.
- 1638. Violations of statutes and other regulations in general.
- 1639. Premises liability.
- 1640. Protection against acts of third persons.
- 1641. Proximate cause.
- 1642. Defenses and mitigating circumstances; contributory and comparative fault.

5. WEIGHT AND SUFFICIENCY.

- 1650. In general.
- 1651. Degree of proof.
- 1652. — In general.
- 1653. — Preponderance of evidence.
- 1654. — Substantial evidence.
- 1655. — Conjecture or speculation.
- 1656. Direct or circumstantial evidence in general.
- 1657. Necessity of expert testimony.
- 1658. Miscellaneous particular cases.
- 1659. Heightened degrees of negligence.
- 1660. Rescues and emergencies.
- 1661. Dangerous situations and substances; strict liability.
- 1662. Trades, special skills and professions.
- 1663. Sports, games and recreation.
- 1664. Fires.
- 1665. Negligent entrustment.
- 1666. Violations of statutes and other regulations.
- 1667. Premises liability.
- 1668. — In general.
- 1669. — Slips and falls in general.
- 1670. — Buildings and other structures.
- 1671. — Pools and bodies of water.
- 1672. — Liabilities relating to construction, demolition and repair.
- 1673. Protection against acts of third persons.
- 1674. Proximate cause.
- 1675. — In general; degrees of proof.
- 1676. — Direct or circumstantial evidence.
- 1677. — Miscellaneous particular cases.
- 1678. — Fires.
- 1679. — Premises liability.
- 1680. — Liabilities relating to construction, demolition and repair.
- 1681. Defenses and mitigating circumstances.

XVIII. ACTIONS.(Cont'd)

- 1682. — In general.
- 1683. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Standard or degree of proof, in general.
 - (3). Direct or circumstantial evidence, in general.
 - (4). Miscellaneous particular cases.
 - (5). Premises liability.
 - (6). — In general.
 - (7). — Slips and falls in general.
 - (8). — Buildings and other structures.
 - (9). — Pools and bodies of water.
 - (10). — Liabilities relating to construction, demolition, and repair.
 - (11). Fires.
 - (12). Last clear chance.
- 1684. — Effect of others' fault; comparative negligence.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
- 1685. — Assumption of risk.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.

(D) QUESTIONS FOR JURY AND DIRECTED VERDICTS.

- 1691. In general.
- 1692. Duty as question of fact or law generally.
- 1693. Negligence as question of fact or law generally.
- 1694. Standard of proof; evidentiary showing required.
- 1695. Res ipsa loquitur.
- 1696. Miscellaneous particular cases.
- 1697. Heightened degrees of negligence.
- 1698. Rescues and emergencies.
- 1699. Dangerous situations and substances; strict liability.
- 1700. Trades, special skills and professions.
- 1701. Sports, games and recreation.
- 1702. Fires.
- 1703. Negligent entrustment.

272. NEGLIGENCE**XVIII. ACTIONS.(Cont'd)**

- 1704. Violations of statutes and other regulations.
- 1705. Premises liability.
- 1706. — In general.
- 1707. — Slips and falls in general.
- 1708. — Buildings and other structures.
- 1709. — Pools and bodies of water.
- 1710. — Liabilities relating to construction, demolition and repair.
- 1711. Protection against acts of third persons.
- 1712. Proximate cause.
- 1713. — In general.
- 1714. — Particular cases.
- 1715. Defenses and mitigating circumstances.
- 1716. — In general.
- 1717. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
 - (4). — In general.
 - (5). — Slips and falls in general.
 - (6). — Buildings and other structures.
 - (7). — Pools and bodies of water.
 - (8). — Liabilities relating to construction, demolition, and repair.
 - (9). Fires.
 - (10). Last clear chance.
- 1718. — Effect of others' fault; comparative negligence.
- 1719. — Assumption of risk.

(E) INSTRUCTIONS.

- 1720. In general.
- 1721. Presumptions and burden of proof.
- 1722. — In general.
- 1723. — Res ipsa loquitur.
- 1724. Miscellaneous particular cases.
- 1725. Heightened degrees of negligence.
- 1726. Rescues and emergencies.
- 1727. Dangerous situations and substances; strict liability.
- 1728. Trades, special skills and professions.
- 1729. Sports, games and recreation.
- 1730. Fires.
- 1731. Negligent entrustment.

XVIII. ACTIONS.(Cont'd)

- 1732. Violations of statutes and other regulations.
- 1733. Premises liability.
- 1734. — In general.
- 1735. — Slips and falls in general.
- 1736. — Buildings and other structures.
- 1737. — Pools and bodies of water.
- 1738. — Liabilities relating to construction, demolition and repair.
- 1739. Protection against acts of third persons.
- 1740. Proximate cause.
- 1741. — In general.
- 1742. — Particular cases.
- 1743. Defenses and mitigating circumstances.
- 1744. — In general.
- 1745. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
 - (4). — In general.
 - (5). — Slips and falls in general.
 - (6). — Buildings and other structures.
 - (7). — Pools and bodies of water.
 - (8). — Liabilities relating to construction, demolition, and repair.
 - (9). Fires.
 - (10). Last clear chance.
- 1746. — Effect of others' fault; comparative negligence.
- 1747. — Assumption of risk.

(F) VERDICT AND FINDINGS.

- 1750. In general.

XIX. CRIMINAL NEGLIGENCE.

Negligence as general standard of criminal intent, see CRIMINAL LAW ¶23.

- 1800. In general.
- 1801. Constitutional, statutory and regulatory provisions.
- 1802. Offenses in general.
- 1804. Prosecutions.
- 1805. — In general.
- 1806. — Indictment and information.
- 1807. — Evidence.
- 1808. — Trial.
 - (1). In general.

272. NEGLIGENCE**XIX. CRIMINAL NEGLIGENCE.**(Cont'd)

- (2). Questions for jury.
- (3). Instructions.
- 1809. — Sentence and punishment.

274. NEWSPAPERS**SUBJECTS INCLUDED**

Periodicals designated or employed to publish laws or other public acts, proceedings, etc., or notices or advertisements relating to judicial or other official proceedings, whether for information of the public or as notice to individuals

Official appointment or designation or other selection of newspapers for such purposes

Compensation for making such publications, contracts therefor, and rights and liabilities in respect thereof

News associations or agencies

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contempt, publication of reports of judicial proceedings constituting, see **CONTEMPT**

Libels, publication of, see **LIBEL AND SLANDER**

Notice, effect of publication in newspaper as, see **NOTICE** and specific topics

Process, service by publication, see **PROCESS**

1. Appointment or designation of official papers.
 - (.5). In general.
 - (1). Authority or duty to designate and effect of designation.
 - (2). Statutory provisions.
 - (3). Newspapers which may be designated.
 - (4). Mode and validity of appointment or designation.
 - (5). Review of proceedings.
 - (6). Duration of appointment.
2. Contracts with public bodies or officers.
3. Requirements of statutes and ordinances as to publication.

- (1). In general.
- (2). Character of newspaper and determination thereof in general.
- (3). Place of printing or issue.
- (4). Frequency of issue.
- (5). Circulation.
- (6). Language.
4. Orders of court for publication of notices or advertisements in judicial proceedings.
5. Compensation for publication.
 - (1). In general.
 - (2). Amount.
6. Proof of publication.
- 6.1. Rights, duties, and liabilities.
- 6.5. Regulation and offenses.
7. News associations and agencies.

275. NEW TRIAL**SUBJECTS INCLUDED**

Judicial re-examination by the same tribunals of issues in civil cases after trial and determination thereof by courts, sitting with or without a jury, or by referees

Nature and scope of the remedy in general

Grounds for new trials, as matter of right or as matter of discretion

Jurisdiction to grant and proceedings to obtain new trials

Proceedings at new trials

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Criminal cases, new trials in, see **CRIMINAL LAW**

Federal courts, new trials in, see **FEDERAL CIVIL PROCEDURE**

Justices of the peace, new trials before, see **JUSTICES OF THE PEACE**

Referees, recommittal of causes to, see **REFERENCE**

Rehearings in—

Admiralty, see **ADMIRALTY**

Equity, see **EQUITY**

275. NEW TRIAL

Review, necessity and effect of motion for new trial for purposes of, review of decisions granting or refusing new trials, and decisions on appeal, etc., remanding causes for new trials, see **APPEAL AND ERROR**

I. NATURE AND SCOPE OF REMEDY,
 ⚭0.5–12.

II. GROUNDS, ⚭13–108.

(A) ERRORS AND IRREGULARITIES IN GENERAL, ⚭13–27.

(B) MISCONDUCT OF PARTIES, COUNSEL, OR WITNESSES,
 ⚭28–32.

(C) RULINGS AND INSTRUCTIONS AT TRIAL, ⚭33–41.

(D) DISQUALIFICATION OR MISCONDUCT OF OR AFFECTING JURY, ⚭42–56.

(E) IRREGULARITIES OR DEFECTS IN VERDICT OR FINDINGS,
 ⚭57–64.

(F) VERDICT OR FINDINGS CONTRARY TO LAW OR EVIDENCE, ⚭65–81.

(G) SURPRISE, ACCIDENT, INADVERTENCE, OR MISTAKE,
 ⚭82–98.

(H) NEWLY DISCOVERED EVIDENCE, ⚭99–108.

III. PROCEEDINGS TO PROCURE NEW TRIAL, ⚭109–168.

IV. PROCEEDINGS AT NEW TRIAL,
 ⚭169–175.

V. STATUTORY NEW TRIAL AS OF RIGHT, ⚭176–188.

I. NATURE AND SCOPE OF REMEDY.

0.5. Nature and scope of remedy in general.

1. Power and duty of court in general.
2. Causes in which new trial is authorized.
3. Condition of cause in general.
4. Effect of entry of judgment.
5. Existence of or resort to other remedy.
6. Discretion of court.
7. Right to new trial in general.
8. New trial as to one or more co-parties.
9. New trial as to part of issues.
10. Estoppel, waiver, or agreements affecting right.
11. Successive applications.
 - (1). In general.

I. NATURE AND SCOPE OF REMEDY.(Cont'd)

- (2). Limitation as to number of new trials.
12. Operation and effect of application.

II. GROUNDS.

(A) ERRORS AND IRREGULARITIES IN GENERAL.

13. Failure of justice in general.
14. Nature and theory of cause.
15. Parties.
16. Process.
17. Motions and other interlocutory proceedings.
18. Pleadings.
19. Mode of trial.
20. Proceedings preliminary to trial.
21. Conduct of trial in general.
22. Irregularities or misconduct of officers.
23. Rendition of decision.
24. Form and entry of judgment.
25. Effect of change in law subsequent to trial.
26. Necessity of objection.
27. Harmless error.

(B) MISCONDUCT OF PARTIES, COUNSEL, OR WITNESSES.

28. Conduct of party.
29. Conduct of counsel.
30. Conduct of witness.
31. Necessity of objection.
32. Harmless error.

(C) RULINGS AND INSTRUCTIONS AT TRIAL.

33. Rulings ground for application in general.
34. Motions for continuance.
35. Reception of evidence.
36. Arguments and conduct of counsel.
37. Rulings on incidental questions and matters.
38. Submission of case or questions to jury.
39. Instructions.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Inapplicable instructions.
 - (4). Particular actions or issues.
 - (4.1). — In general.
 - (5). — Negligence and torts in general.

275. NEW TRIAL**II. GROUNDS.(Cont'd)**

- (6). — Automobile cases.
- 39.5. Failure or refusal to instruct.
 - (1). In general.
 - (2). Particular actions or issues.
- 40. Necessity of objection and exception at trial.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). Submission of case or questions to jury.
 - (4). Instructions and failure or refusal to instruct.
- 41. Harmless error.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). Instructions or failure or refusal to instruct.
- (D) DISQUALIFICATION OR MISCONDUCT OF OR AFFECTING JURY.**
- 42. Disqualification of jurors.
 - (1). In general.
 - (2). Bias or prejudice and formation or expression of opinion.
 - (3). Prior service as juror.
 - (4). Relationship to or connection with party, counsel, or person interested.
- 43. Mistake as to identity of juror.
- 44. Misconduct of jurors in general.
 - (1). In general.
 - (2). Statements and expressions of opinion during trial.
 - (3). Consideration of matters not in evidence.
 - (4). View or inspection and investigations by jurors.
- 45. Use of intoxicating liquors.
- 46. Separation.
- 47. Communications by or with jurors.
- 48. Misconduct of others affecting jury.
- 48.1. — In general.
- 49. — Parties or counsel.
- 50. — Officers.
- 51. — Bystanders.
- 52. Manner of arriving at verdict.
- 53. Necessity of objection at trial.
- 53.1. — In general.

II. GROUNDS.(Cont'd)

- 54. — Knowledge or means of knowledge of facts.
- 55. — Failure to object.
- 56. Effect as to result.
- (E) IRREGULARITIES OR DEFECTS IN VERDICT OR FINDINGS.**
- 57. Rendition and reception of verdict.
- 58. Verdict in general.
- 59. Special verdict and findings.
- 60. Inconsistent findings.
- 61. Decision and findings of court.
- 62. Report and findings of referee.
- 63. Necessity of objection or exception.
- 64. Harmless error.
- (F) VERDICT OR FINDINGS CONTRARY TO LAW OR EVIDENCE.**
- 65. Power and duty of court in general.
- 66. Verdict contrary to law or instructions.
- 67. Verdict contrary to evidence.
- 68. — In general.
 - 68.1. — Contrary verdict in general.
 - 68.2. — Discretion.
 - 68.3. — Verdict opposed to opinion of court.
 - 68.4. — Particular actions or issues.
 - (1). In general.
 - (2). Contracts.
 - (3). Torts.
 - (4). — In general.
 - (5). — Negligence.
 - (6). — Automobile cases.
- 69. — Credibility of witnesses.
- 70. — Sufficiency of evidence.
- 71. — Conflicting evidence.
- 72. — Weight of evidence.
 - (1). In general.
 - (2). Weighing evidence as court function.
 - (3). Discretion of court.
 - (4). Preponderance of evidence.
 - (5). Clear, great or overwhelming, or manifest weight or preponderance.
 - (6). Verdict supported by evidence; conflicting evidence.
 - (7). Particular actions or issues.
 - (7.1). — In general.

275. NEW TRIAL**II. GROUNDS.(Cont'd)**

- (8). — Contracts.
 - (9). — Negligence and torts in general.
 - (10). — Automobile cases.
 - 73. Special findings by jury.
 - 74. Amount of recovery in general.
 - 75. Inadequate damages.
 - (1). In general.
 - (2). Nature of action in general.
 - (3). Actions on contracts.
 - (4). Actions for personal injuries.
 - (5). Actions for death.
 - (6). Actions for libel and slander.
 - 76. Excessive damages.
 - (1). In general.
 - (2). Nature of action in general.
 - (3). Actions on contracts.
 - (4). Actions for personal injuries.
 - (5). Actions for death.
 - (6). Actions for libel and slander.
 - 77. Mistake, passion, or prejudice of jurors.
 - (1). In general.
 - (2). Excessive damages in general.
 - (3). Actions for libel and slander.
 - (4). Inadequate damages.
 - 78. Successive verdicts.
 - (1). In general.
 - (2). Statutory restrictions.
 - (3). Amount of recovery.
 - 79. Decision and findings of court.
 - 80. Report and findings of referee.
 - 81. Necessity of objection or exception.
- (G) SURPRISE, ACCIDENT, INADVERTENCE, OR MISTAKE.**
- 82. Power and duty of court in general.
 - 83. Amendment of pleading.
 - 84. Notice and time or place of trial or hearing.
 - 85. Absence or disability of party.
 - 86. Absence or withdrawal of counsel.
 - 87. Incompetency or neglect of counsel.
 - 88. Absence of witness or evidence.
 - 89. Evidence in general.
 - 90. Testimony and conduct of witness.
 - 91. Inadvertence or mistake of party or counsel.
 - 92. Rulings and instructions.

II. GROUNDS.(Cont'd)

- 93. Making bill of exceptions, case, or statement of facts.
 - 94. Accident or defect not attributable to party.
 - 95. Prudence and diligence in guarding against surprise or accident.
 - 96. Diligence in averting consequences.
 - 97. Necessity of objection or application for relief at trial.
 - 98. Effect as to result.
- (H) NEWLY DISCOVERED EVIDENCE.**
- 99. Power and duty of court in general.
 - 100. Nature of evidence discovered.
 - 101. Time of discovery.
 - 102. Diligence in procuring evidence.
 - (.5). In general.
 - (1). Necessity for diligence.
 - (2). Cumulative and impeaching evidence.
 - (3). Sufficiency of showing of diligence in general.
 - (4). Search for witnesses.
 - (5). Interviewing or examining witnesses.
 - (6). Efforts to obtain documents or books and inspection thereof.
 - (7). Matters of record.
 - (8). Failure to apply for continuance or other relief.
 - (9). Excuses for lack of diligence.
 - 103. Relevancy, materiality, and competency.
 - 104. Cumulative evidence.
 - (1). In general.
 - (2). What constitutes in general.
 - (3). Nature of action or issue and character of evidence.
 - 105. Impeachment of witness.
 - 106. Conflicting, contradicted, or contradicting evidence.
 - 107. Credibility.
 - 108. Sufficiency and probable effect.
 - (1). In general.
 - (2). Nature of action or issue and character of evidence in general.
 - (3). Actions on contract.
 - (4). Actions for personal injuries.

275. NEW TRIAL**II. GROUNDS.(Cont'd)**

- (5). Extent of injury and amount of recovery.

III. PROCEEDINGS TO PROCURE NEW TRIAL.

109. Mode and form in general.
 110. New trial on court's own motion.
 111. Parties entitled to apply.
 112. Joint applications.
 113. Jurisdiction of application.
 114. Court or judge to which application may be made.
 115. Time for application.
 116. — In general.
 116.1. — What constitutes trial.
 116.2. — Commencement of time.
 116.3. — Compliance with requirements.
 117. — Limitations as to time or term of court.
 (1). In general.
 (2). Premature application.
 (3). Limitations as to term of court.
 118. — Extension of time.
 119. — Effect of delay or laches.
 120. — Excuses for delay.
 121. — Stipulations as to time and waiver of objections to delay.
 122. Parties on application.
 124. Requisites of motion in general.
 (1). In general.
 (2). Setting out evidence and instructions.
 125. Statement of grounds in general.
 126. Specification of errors.
 126.1. — In general.
 127. — Necessity.
 128. — Requisites and sufficiency in general.
 (1). In general.
 (2). Reception of evidence.
 (3). Submission of questions to jury and instructions.
 (4). Disqualification or misconduct of or affecting jury.
 (5). Verdict or findings contrary to law or evidence.
 (6). Amount of recovery.
 129. — Including errors in one assignment.
 130. — Scope and effect.

III. PROCEEDINGS TO PROCURE NEW TRIAL.(Cont'd)

131. Bill of exceptions, case, or statement of facts.
 (1). In general.
 (2). Requisites and sufficiency in general.
 (3). Incorporating evidence.
 (4). Settlement and allowance.
 (5). Time for settlement, filing, and service.
 (6). Extension of time and waiver of objections to delay.
 (7). Amendment and striking from files.
 (8). Compelling allowance or settlement and proceedings for settlement.
 132. Brief, report, or transcript of evidence.
 (5). In general.
 (1). Necessity.
 (2). Requisites and sufficiency.
 (3). Time for filing or approval and waiver of objections to delay.
 (4). Approval and revocation thereof.
 133. Minutes of court or judge.
 134. Stenographer's report.
 135. Notice of motion or of intention to apply.
 135.1. — In general.
 136. — Necessity.
 137. — Form and requisites.
 138. — Service.
 139. — Waiver of notice or of defects.
 140. Affidavits and extrinsic evidence in general.
 (1). In general.
 (2). Counter affidavits.
 (3). Grounds of motion.
 141. Affidavits and testimony of jurors.
 142. — In general.
 143. — Impeachment of verdict.
 (1). In general.
 (2). Misconduct of or affecting jurors.
 (3). Assent to verdict.
 (4). Mistake or inadvertence.
 (5). Manner of arriving at verdict and computing damages.
 144. — Sufficiency and effect, and counter affidavits.

275. NEW TRIAL**III. PROCEEDINGS TO PROCURE
NEW TRIAL.(Cont'd)**

- 145. Evidence as to statements of jurors.
- 146. Affidavits as to surprise, accident, or mistake.
- 146.1. — In general.
- 147. — Necessity and sufficiency in general.
- 148. — Counter affidavits.
- 149. Affidavits as to newly discovered evidence.
- 149.1. — In general.
- 150. — Necessity and sufficiency in general.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency in general.
 - (3). Nature of evidence.
 - (4). Time of discovery and diligence.
- 151. — Counter affidavits.
- 152. Amendment of motion or affidavits.
- 153. Filing motion, notice, and affidavits.
- 154. Dismissal or abandonment.
- 155. Time for hearing and decision.
- 156. Continuance or postponement.
- 157. Hearing.
- 158. Rehearing.
- 159. Determination in general.
- 160. Grant of new trial ineffectual or not beneficial.
- 161. Conditions on granting or refusing new trial.
 - (1). In general.
 - (2). Payment of costs, expenses, and attorney fees in general.
 - (3). Nature of grounds.
 - (4). Performance or breach of condition.
- 162. Remission or reduction of excess of recovery.
 - (1). In general.
 - (2). Excess of amount claimed.
 - (3). Unliquidated damages and effect of passion or prejudice.
 - (4). Interest.
 - (5). Offer to remit and compliance with order.
- 163. Order granting or refusing new trial.
 - (1). In general.

**III. PROCEEDINGS TO PROCURE
NEW TRIAL.(Cont'd)**

- (2). Construction and operation.
- (3). Objections and exceptions.
- 164. Order for judgment instead of new trial.
- 165. Vacating or setting aside order on motion for new trial.
- 166. Petition after term of court, and proceedings thereon.
 - (1). In general.
 - (2). Time for filing.
 - (3). Petition.
 - (4). Trial.
- 167. Actions for new trial.
 - (.5). In general.
 - (1). Nature and scope of remedy.
 - (2). Grounds.
 - (3). Proceedings.
- 168. Application to appellate court and proceedings thereon.

IV. PROCEEDINGS AT NEW TRIAL.

- 169. Preliminary proceedings.
- 170. Scope of inquiry and powers of court.
- 171. Amendment of pleadings and other proceedings.
- 172. Effect of proceedings at former trial.
- 173. Mode and conduct of trial in general.
- 174. Reception of evidence.
- 175. Questions for jury.

V. STATUTORY NEW TRIAL AS OF RIGHT.

- 176. Nature of right.
- 177. Statutory provisions.
- 178. Causes in which new trial is authorized.
 - (.5). In general.
 - (1). Actions involving title and right to possession of real property in general.
 - (2). Actions to quiet title.
 - (3). Actions for partition.
 - (4). Actions for cancellation of instruments.
 - (5). Actions to enforce trusts.
 - (6). Joinder of causes of action or defenses.
- 179. Nature of trial or proceeding.
- 180. Parties entitled to new trial.
- 181. Waiver of right.
- 182. Right to successive new trials.

275. NEW TRIAL**V. STATUTORY NEW TRIAL
AS OF RIGHT.(Cont'd)**

- 183. Proceedings to procure new trial.
- 184. Conditions and performance thereof.
- 185. — In general.
- 186. — Payment of costs.
- 187. — Payment of damages.
- 188. Proceedings at new trial.

276. NOTARIES**SUBJECTS INCLUDED**

- Notaries public
- Their appointment, qualification, and tenure of office
- Their rights, powers, duties, and liabilities in general

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Particular acts and proceedings by notaries, see **ACKNOWLEDGMENT**, **AFFIDAVITS**, **COMMERCIAL PAPER**, and other specific topics

- 1. Nature and existence of office.
- 2. Appointment, qualification, and tenure.
- 3. Compensation.
- 4. Jurisdiction, powers, and functions.
- 5. Deputies, and delegation of powers.
- 6. Acts and proceedings in general.
- 8. Seal.
- 9. Certificates and records in general.
- 10. Liabilities for negligence or misconduct.
- 11. Liabilities on official bonds.

277. NOTICE**SUBJECTS INCLUDED**

Knowledge or information of facts, and means of information and constructive

knowledge equivalent in legal effect to actual knowledge

Communication, by private act or by public authority, of information or warning of facts or of acts intended or required to be done

Nature of actual notice, express or implied, and of constructive notice

What constitutes notice or charges with notice in general

Necessity of notice and waiver thereof

Requisites of formal notice in general

Modes of giving or serving formal notice, and sufficiency thereof

Offenses of defacing, destroying, or removing public notices

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Attorneys, agents, partners, corporate officers, etc., effect of notice to, see **ATTORNEYS AND LEGAL SERVICES**, **PRINCIPAL AND AGENT**, **PARTNERSHIP**, **CORPORATIONS AND BUSINESS ORGANIZATIONS**, and other specific topics

Good faith of purchasers, priority of mortgages, etc., notice as affecting, see **REAL PROPERTY CONVEYANCES**, **SALES**, **COMMERCIAL PAPER**, **MORTGAGES AND DEEDS OF TRUST**, **CHATTEL MORTGAGES**, **SECURED TRANSACTIONS**

Judicial notice of facts, see **EVIDENCE**, **CRIMINAL LAW**

Newspapers officially designated for publication of notices, designation of and their compensation, see **NEWSPAPERS**

Particular facts, acts, and proceedings, notice of, see specific topics

Pendency of action, notice of, see **LIS PENDENS**

Recording instruments in writing to constitute constructive notice, see **RECORDS**

Suit—

Notice and demand before, see **ACTION**, **CONVERSION AND CIVIL THEFT**, **REPLEVIN**, and topics relating to other particular forms and causes of action

Notice of, see **PROCESS**

- 1. Nature in general.

279. NUISANCE

- 1.5. Actual notice.
- 1.6. — In general.
- 2. — Knowledge or express notice.
- 3. — Implied notice.
- 4. Constructive notice.
- 5. — In general.
- 6. — Facts putting on inquiry.
- 7. Necessity.
- 8. Waiver.
- 9. Requisites and sufficiency of formal notice in general.
- 10. Service in general.
- 11. Notice by publication.
- 12. Operation and effect in general.
- 13. Pleading.
- 14. Evidence.
- 15. Questions for jury.
- 16. Defacing, destroying, or removing public notices.

278. NOVATION

SUBJECTS INCLUDED

- Substitution for and in discharge of an existing pecuniary obligation
- Nature, requisites, sufficiency, and effect of such novation
- Pleading novation and proof thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Modification of contracts, see **CONTRACTS**, and topics relating to particular classes of contracts
- Statute of frauds, requirements of, see **FRAUDS, STATUTE OF**
- 1. Nature and requisites in general.
- 2. Subject-matter.
- 3. Discharge of existing obligation as consideration.
- 4. Substitution of new obligation between same parties.
- 5. Substitution of new debtor.
- 6. Substitution of new creditor.

- 7. Assent of parties.
- 8. Validity.
- 9. Performance of substituted agreement.
- 10. Operation and effect.
- 11. Pleading.
- 12. Evidence.
- 13. Questions for jury and instructions.

279. NUISANCE

SUBJECTS INCLUDED

- Use of property or rights and personal conduct causing material annoyance, inconvenience, or injury to others, in respect of health, safety, comfort, sense of decency, morals, or exercise of their rights
- Nature and extent of liability for such injuries in general
- Civil remedies therefor
- Criminal responsibility for public nuisances and purprestures
- Prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Landlord or tenant, liabilities in respect of demised premises, see **LANDLORD AND TENANT**
 - Municipal bodies, powers of, see **MUNICIPAL CORPORATIONS, ZONING AND PLANNING**
 - Obstruction of—
 - Highways, streets, etc., see **HIGHWAYS, MUNICIPAL CORPORATIONS**
 - Navigation, see **WATER LAW**
 - Particular classes of offenses of the nature of nuisances, see **DISORDERLY HOUSE, GAMING**, and other specific topics
 - Watercourses, obstruction, diversion, pollution, etc., see **WATER LAW**
-
- I. **PRIVATE NUISANCES**, ¶1–58.
 - (A) **NATURE OF INJURY, AND LIABILITY THEREFOR**, ¶1–10.

279. NUISANCE

- I. PRIVATE NUISANCES—Cont'd
- (B) ACQUISITION OF RIGHTS BY PRESCRIPTION, ¶11–17.
- (C) ABATEMENT AND INJUNCTION, ¶18–40.
- (D) ACTIONS FOR DAMAGES, ¶41–58.
- II. PUBLIC NUISANCES, ¶59–96.
- (A) NATURE OF INJURY, AND LIABILITY THEREFOR, ¶59–70.
- (B) RIGHTS AND REMEDIES OF PRIVATE PERSONS, ¶71–76.
- (C) ABATEMENT AND INJUNCTION, ¶77–88.
- (D) CRIMINAL PROSECUTIONS, ¶89–96.

I. PRIVATE NUISANCES.**(A) NATURE OF INJURY, AND LIABILITY THEREFOR.**

- 1. Nature and elements of private nuisance in general.
- 2. Intent.
- 3. What constitutes nuisance in general.
 - (1). In general.
 - (2). Necessities of business and public convenience or utility in general.
 - (3). Noise and pollution of atmosphere in general.
 - (4). Water-closets, stables, and out-houses.
 - (5). Mills, foundries, and other establishments.
 - (6). Explosives and combustibles.
 - (7). Undertaking establishments and burial grounds.
 - (8). Hospitals, asylums, and pesthouses.
 - (9). Games and entertainments.
 - (10). Keeping and slaughter of animals.
 - (11). Livery stables and garages.
 - (12). Fences.
- 4. Nature and extent of injury or danger.
- 5. Exercise of legal right.
- 6. Acts authorized or prohibited by public authority.
- 7. Care and precautions against annoyance or injury.
- 8. Similar annoyances or injuries from other causes.

I. PRIVATE NUISANCES.(Cont'd)

- 9. Persons creating or causing nuisance.
- 10. Persons continuing nuisance.

(B) ACQUISITION OF RIGHTS BY PRESCRIPTION.

- 11. Rights which may be acquired.
- 12. Against whom rights may be acquired.
- 13. As to what property rights may be acquired.
- 14. Extent of user.
- 15. Duration and continuity of user.
- 16. Adverse character of user.
- 17. Operation and effect.

(C) ABATEMENT AND INJUNCTION.

- 18. Nature of remedy.
- 19. Nuisances subject to abatement or injunction.
- 20. Abatement by act of person injured.
- 21. Grounds for proceedings for abatement.
- 22. Grounds for injunction.
- 23. — In general.
 - (1). In general.
 - (2). Adequacy of remedy at law.
 - (3). Determination of right at law.
 - (4). Notice to person maintaining nuisance.
- 24. — Mandatory injunction.
- 25. Defenses.
 - (1). In general.
 - (2). Injury or inconvenience to defendant.
- 26. Persons entitled to maintain proceedings.
- 27. Persons against whom proceedings may be brought.
- 28. Jurisdiction and venue.
- 29. Time to sue, limitations, and laches.
- 30. Parties.
- 31. Preliminary or temporary injunction.
- 32. Pleading.
- 33. Evidence.
- 34. Trial or hearing.
- 35. Relief awarded.
- 36. Judgment or decree, and enforcement thereof in general.
- 37. Mode and extent of abatement.
- 38. Violation of injunction, and punishment thereof.

279. NUISANCE**I. PRIVATE NUISANCES.(Cont'd)**

- 39. Appeal.
- 40. Costs.

(D) ACTIONS FOR DAMAGES.

- 41. Nature and form of remedy.
- 42. Grounds of action and conditions precedent.
- 43. Defenses.
- 44. Persons entitled to sue.
- 45. Jurisdiction and venue.
- 46. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 47. Parties.
- 48. Pleading.
- 49. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Similar matters and transactions.
 - (4). Extent of injury or damage.
 - (5). Weight and sufficiency.
- 50. Damages.
 - (.5). In general.
 - (1). Elements and measure of damages in general.
 - (2). Diminution of rental or salable value.
 - (3). Damages accruing after commencement of action.
 - (4). Prospective damages.
 - (5). Mitigation and reduction of loss.
 - (6). Exemplary damages.
 - (7). Amount of damages.
- 51. Trial.
- 52. — In general.
- 53. — Questions for jury.
- 54. — Instructions.
- 55. — Verdict and findings.
- 56. Judgment and execution.
- 57. Order for abatement of nuisance.
- 58. Appeal and error.

II. PUBLIC NUISANCES.**(A) NATURE OF INJURY, AND LIABILITY THEREFOR.**

- 59. Nature and elements of public nuisance in general.

II. PUBLIC NUISANCES.(Cont'd)

- 60. Provisions of statutes and ordinances.
- 61. Matters constituting public nuisances in general.
- 62. Public annoyance, injury, or danger.
- 63. Purprestures and other encroachments on public property or rights.
- 64. Exercise of legal right.
- 65. Acts authorized or prohibited by public authority.
- 66. Effect of prescription.
- 67. Care and precautions against annoyance or injury.
- 68. Similar annoyances or injuries from other causes.
- 69. Persons creating or causing nuisance.
- 70. Persons continuing nuisance.

(B) RIGHTS AND REMEDIES OF PRIVATE PERSONS.

- 71. Nature and grounds of liability to individuals.
- 72. Special annoyance, injury, or danger to individuals.
- 73. Prescription as against individuals.
- 74. Abatement by act of person injured.
- 75. Actions for abatement or injunction.
- 76. Actions for damages.

(C) ABATEMENT AND INJUNCTION.

- 77. Nature of remedy.
- 78. Abatement by act of public authorities.
- 79. Grounds for proceedings for abatement.
- 80. Grounds for injunction.
- 81. Defenses.
- 82. Persons by or against whom proceedings may be brought.
- 83. Summary remedies.
- 84. Actions.
- 85. Mode and extent of abatement.
- 86. Violation of injunction, and punishment thereof.
- 87. Appeal.
- 88. Costs and expenses.

(D) CRIMINAL PROSECUTIONS.

- 89. Persons entitled to prosecute.
- 90. Preliminary proceedings.
- 91. Indictment or information.
 - (1). In general.

279. NUISANCE**II. PUBLIC NUISANCES.**(Cont'd)

(2). Issues, proof, and variance.

92. Evidence.

93. Trial.

95. Sentence and punishment.

96. Order for abatement of nuisance on conviction.

280. OATH**SUBJECTS INCLUDED**

Solemn declarations or affirmations, with or without invocation of or appeal to God or other especial sanction, made in verification of averments, testimony, or promises to perform the duties of a trust or office

Nature and necessity of making oath

Administering, making, form, requisites, and sufficiency of such oaths and other affirmations in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

False swearing, see PERJURY

Oath or affirmation of—

Arbitrators, see ALTERNATIVE DISPUTE RESOLUTION

Jurors, see JURY

Witnesses, see WITNESSES

Qualification for office or position of trust, see PUBLIC EMPLOYMENT, and topics relating to particular officers, TRUSTS, EXECUTORS AND ADMINISTRATORS and other specific topics

Profane swearing, see CRIMINAL LAW ¶45.20

Verification of—

Affidavits, see AFFIDAVITS

Pleadings, see PLEADING, FEDERAL CIVIL PROCEDURE

1. Nature and functions in general.
2. Authority to administer.
3. Mode of administration.
4. Affirmation or other substitute.

5. Making and sufficiency.

6. Evidence of taking.

281. OBSCENITY**SUBJECTS INCLUDED**

Lewd or immodest acts, conduct, or language, offensive to the public sense of decency or to the public morals, in general

Publicly exhibiting or disseminating objects, publications, or representations of lewd or indecent character, and publishing obscene libels

Nature and elements of the crimes of indecent exposure, using obscene language, dealing in indecent articles or publications, etc., and obscene libel

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Forfeitures for violation of customs laws, see CUSTOMS DUTIES

Freedom of expression, constitutional guaranty of, see CONSTITUTIONAL LAW

Indecent assaults, see SEX OFFENSES

Mailing obscene matter, see POSTAL SERVICE

Profane swearing, see CRIMINAL LAW ¶45.20

Regulation of adult businesses, see also PUBLIC AMUSEMENT AND ENTERTAINMENT and ZONING AND PLANNING

Use of minors to produce obscene material and dissemination of obscene materials to minors, see INFANTS

I. IN GENERAL, ¶100–119.

II. OFFENSES IN GENERAL, ¶120–149.

III. PUBLICATIONS, PHOTOGRAPHS, AND VIDEOS, ¶150–199.

IV. PROSECUTION, ¶200–249.

V. SENTENCE AND PUNISHMENT, ¶250–269.

281. OBSCENITY**VI. SEARCHES AND SEIZURES,**
⌚270–299.**VII. FORFEITURE AND DESTRUCTION
OF OBSCENE MATTER,**
⌚300–301.**I. IN GENERAL.**

- 100. In general.
- 101. Definitions; test for obscenity.
- 102. — In general.
- 103. — Sex and nudity.
- 104. — Prurient interest.
- 105. — Contemporary community standards.
- 106. — Absence of serious value when taken as a whole.
- 107. Constitutional, statutory, and regulatory provisions.
- 108. — In general.
- 109. — Purpose.
- 110. — Construction and operation.
- 111. — Power to regulate.
- 112. — Validity of statutes, ordinances, and regulations.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
- 113. — Retroactive operation.
- 114. — Concurrent and conflicting statutes and regulations.
 - (1). In general.
 - (2). Preemption.
- 115. — What law governs.

II. OFFENSES IN GENERAL.

- 120. In general.
- 121. Elements in general.
- 122. — In general.
- 123. — Knowledge or intent.
- 124. Lewdness in general.
- 125. Indecent exposure.

II. OFFENSES IN GENERAL.(Cont'd)

- 126. — In general.
- 127. — Public place.
- 128. — Knowledge or intent.
- 129. Obscene language.
- 130. Exhibitions and performances.
- 131. Physical articles deemed obscene, possession and sale of.
- 132. Attempts.
- 133. Defenses.
- 134. Parties to crime; aiding and abetting.

**III. PUBLICATIONS, PHOTOGRAPHS,
AND VIDEOS.**

- 150. In general.
- 151. Publications in general.
- 152. — In general.
- 153. — Knowledge or intent.
- 154. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
- 155. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
- 156. — Sale, transportation, or distribution.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
- 157. — Advertising.
- 158. Photographs and videos in general.
- 159. — In general.
- 160. — Knowledge or intent.
- 161. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
 - (5). Electronic transmission; internet.
- 162. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Electronic transmission; internet.
- 163. — Sale, transportation, or distribution.

281. OBSCENITY**III. PUBLICATIONS, PHOTOGRAPHS,
AND VIDEOS.(Cont'd)**

- (1). In general.
- (2). Knowledge or intent.
- (3). Interstate commerce.
- (4). Electronic transmission; internet.
- 164. — Advertising.
- 165. Depictions of minors; child pornography.
- 166. — In general.
- 167. — Knowledge or intent.
- 168. — Depiction of actual child; virtual or computer-generated images.
- 169. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
 - (5). Number or amount of obscene material.
 - (6). Electronic transmission; internet.
- 170. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Electronic transmission; internet.
- 171. — Sale, transportation, or distribution.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Internet or other electronic transmission.
- 172. — Advertising.
- 173. — Recordkeeping and disclosure.
- 174. Attempts.
- 175. Defenses.
- 176. Parties to crime; aiding and abetting.

IV. PROSECUTION.

- 200. In general.
- 201. Indictment, information, presentment, or complaint.
- 202. — In general.
- 203. — Requisites and sufficiency in general.
- 204. — Setting out or describing obscene matter.
- 205. — Issues, proof, and variance.

IV. PROSECUTION.(Cont'd)

- 206. Evidence.
- 207. — In general.
- 208. — Presumptions and burden of proof.
- 209. — Admissibility.
- 210. — Weight and sufficiency.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
 - (10). — In general.
 - (11). — Depiction of actual child; virtual or computer-generated images.
 - (12). — Possession.
 - (13). — Receiving.
 - (14). — Sale or distribution.
 - (15). — Attempts.
 - (16). — Parties to crime; aiding and abetting.
- 211. Trial.
- 212. — In general.
- 213. — Questions for jury.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
 - (10). Attempts.
 - (11). Parties to crime; aiding and abetting.
- 214. — Instructions.
 - (1). In general.
 - (2). Lewdness in general.

282. OBSTRUCTING JUSTICE**IV. PROSECUTION.(Cont'd)**

- (3). Indecent exposure.
- (4). Obscene language.
- (5). Exhibitions and performances.
- (6). Physical articles deemed obscene, possession and sale of.
- (7). Publications in general.
- (8). Photographs and videos in general.
- (9). Depiction of minors; child pornography.
- (10). Attempts.
- (11). Parties to crime; aiding and abetting.

V. SENTENCE AND PUNISHMENT.

- 250. In general.
- 251. Lewdness in general.
- 252. Indecent exposure.
- 253. Obscene language.
- 254. Exhibitions and performances.
- 255. Physical articles deemed obscene, possession and sale of.
- 256. Publications in general.
- 257. Photographs and videos in general.
- 258. Depiction of minors; child pornography.
- 259. Attempts.

VI. SEARCHES AND SEIZURES.

- 270. In general.
- 271. Seizure, suppression, or censorship in general.
- 272. Warrantless searches.
- 273. — In general.
- 274. — Expectation of privacy.
 - (1). In general.
 - (2). Computers; electronic transmission.
- 275. — Probable cause.
 - (1). In general.
 - (2). Particular cases.
- 276. — Exigent circumstances.
- 277. — Plain view.
- 278. — Scope of search.
- 279. Warrants.
- 280. — In general.
- 281. — Proceedings for issuance.
- 282. — Probable cause in general.
 - (1). In general.

VI. SEARCHES AND SEIZURES.(Cont'd)

- (2). Particular cases.
- 283. — Competency of information.
 - (1). In general.
 - (2). Informants.
- 284. — False information; omissions.
- 285. — Time for application.
 - (1). In general.
 - (2). Staleness.
 - (3). Anticipatory warrant.
- 286. — Form and contents of warrant.
 - (1). In general.
 - (2). Particularity; overbreadth in general.
 - (3). Objects or information sought.
 - (4). Places, persons, or objects to be searched.
 - (5). Effect of errors.
- 287. — Execution of warrant.
 - (1). In general.
 - (2). Time of execution.
 - (3). Scope of search or seizure.
- 288. Adversary hearing.
- 289. — In general.
- 290. — Necessity.
- 291. — Conduct of hearing.
- 292. — Evidence.
- 293. — Determination.
- 294. Disposition of property seized.

VII. FORFEITURE AND DESTRUCTION OF OBSCENE MATTER.

- 300. In general.
- 301. Proceedings.

282. OBSTRUCTING JUSTICE**SUBJECTS INCLUDED**

Resisting or obstructing or intimidating an officer or other duly authorized person in the execution of process, civil or criminal, or performance of other official act or duty

Preventing witnesses from attending or testifying, suppressing evidence, and other acts defeating, impeding, or delaying the admin-

282. OBSTRUCTING JUSTICE

istration of justice, public or private, not constituting a distinct offense

Attempts to commit such acts

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Assaults and homicides committed upon or by officers making arrests, etc., see ASSAULT AND BATTERY, HOMICIDE

Escape and rescue of prisoners, see ESCAPE, RESCUE

Officers, misconduct and neglect of, see PUBLIC EMPLOYMENT, SHERIFFS AND CONSTABLES and other specific topics

100. In general.

101. Constitutional, statutory, and regulatory provisions.

102. — In general.

103. — Purpose.

104. — Validity.

105. — Construction.

106. — Retroactive operation.

107. Nature and elements of offense in general.

108. — In general.

109. — Knowledge or intent.

110. — Necessity of actual obstruction.

111. — Nature of proceedings.

(1). In general.

(2). Grand jury proceedings.

(3). Administrative proceedings.

112. Failure to act.

113. — In general.

114. — Failure to assist victim.

115. — Failure to report crime.

116. Prevention of notification to law enforcement.

117. Interfering with performance of official duties.

118. — In general.

119. — Fleeing, evading, or eluding; failure to stop.

120. — Making false report or accusation.

121. — Providing false name or other information to officer.

122. — Failure to obey command or comply with request of officer; failure to assist.

123. — Intimidating or threatening officer.

124. — Resisting or obstructing execution of process in general.

125. — Resisting search.

(1). In general.

(2). Legality of search.

126. — Resisting arrest or detention.

(1). In general.

(2). Knowledge and intent.

(3). What constitutes resistance; force or violence.

(4). Legality of arrest.

(5). Resistance by third parties.

127. — Interference with firefighters or emergency medical personnel.

128. Offenses relating to evidence in general.

129. — In general.

130. — Tampering in general.

131. — Falsifying or altering evidence.

132. — Concealing or withholding evidence.

133. — Destroying evidence.

134. Offenses relating to witnesses or potential witnesses.

135. — In general.

136. — Tampering in general.

137. — Threatening or intimidating in general.

138. — Preventing testimony.

(1). In general.

(2). Witness homicide.

139. — Influencing testimony; procuring false testimony.

140. — Refusal to testify.

141. — Giving false testimony.

142. — Retaliating against witness.

143. Influencing juror or court officer.

144. Harboring fugitive.

145. — In general.

146. — Registered sex offender.

147. Misprision of a felony.

148. — In general.

149. — Seriousness of crime concealed.

150. — Knowledge of commission of crime concealed.

151. Concealing birth or death.

152. Compounding offenses.

284. PARDON AND PAROLE

- 153. — In general.
- 154. — Conduct constituting hampering prosecution.
- 155. — Knowledge of commission of, or seriousness of, crime.
- 156. Attempts.
- 157. — In general.
- 158. — Particular crimes.
- 159. Degrees.
- 160. Defenses.
- 161. Parties to crime; aiding and abetting.
- 162. Indictment, information, presentment, or complaint.
- 163. — In general.
- 164. — Requisites and sufficiency.
 - (1). In general.
 - (2). Interfering with performance of official duties.
 - (3). Resisting arrest.
 - (4). Offenses relating to evidence in general.
 - (5). Offenses relating to witnesses or potential witnesses.
- 165. Issues, proof, and variance.
- 166. Evidence.
- 167. — In general.
- 168. — Presumptions and burden of proof.
- 169. — Admissibility.
- 170. — Weight and sufficiency.
 - (1). In general.
 - (2). Failure to act.
 - (3). Interfering with performance of official duties.
 - (4). Resisting execution of search warrant.
 - (5). Resisting arrest.
 - (6). Offenses relating to evidence.
 - (7). Offenses relating to witnesses or potential witnesses.
 - (8). Harboring fugitive.
 - (9). Misprision of a felony.
 - (10). Compounding offenses.
 - (11). Attempts.
 - (12). Parties to crime; aiding and abetting.
- 171. Trial.
- 172. — In general.
- 173. — Questions for jury.
- 174. — Instructions.
 - (1). In general.

- (2). Interfering with performance of official duties.
- (3). Resisting arrest.
- (4). Offenses relating to evidence in general.
- (5). Offenses relating to witnesses or potential witnesses.
- 175. — Verdict.
- 176. Sentence and punishment.
- 177. — In general.
- 178. — Interfering with performance of official duties.
- 179. — Resisting arrest.
- 180. — Offenses relating to evidence in general.
- 181. — Offenses relating to witnesses or potential witnesses.

284. PARDON AND PAROLE**SUBJECTS INCLUDED**

Grants of exemption from punishment for crime committed, by general pardon or amnesty as well as in individual cases, and whether absolute or conditional, and, more particularly, remissions of the whole or part of the sentence imposed, reprieves from execution of the sentence, commutation of the punishment to a lower grade or lesser amount, and paroles

Nature and scope of pardoning and parole powers in general

Constitutional and statutory provisions relating thereto

In what cases and to whom and for what offenses pardons, paroles, etc., are allowed

Authority to grant and proceedings to obtain pardons, paroles, etc.

Issuance, requisites, validity, construction and effect of instruments of pardon, parole, reprieve, commutation of sentence, etc., and effect of conditions therein

Pleading pardons, paroles, etc., and proof thereof by way of defense

284. PARDON AND PAROLE**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Juveniles and youthful offenders, parole of,
see INFANTS

Reduction of terms of imprisonment by good
conduct, see PRISONS

Suspension of sentence and probation by
courts, see SENTENCING AND PUNISH-
MENT

I. IN GENERAL, ¶¶21–40.

II. PAROLE, ¶¶41–93.

I. IN GENERAL.

21. Clemency in general.
22. Constitutional and statutory provisions.
23. Pardon.
- 23.1. — In general.
24. — Effect of pardon.
25. Proceedings to obtain clemency.
26. General amnesty.
27. Reprieve.
28. Commutation of sentence.

II. PAROLE.

41. In general.
42. Constitutional and statutory provisions.
- 42.1. — In general.
43. — Validity of statutes.
44. Offenses, punishments, and persons sub-
ject of parole.
45. Authority or duty to grant parole or pa-
role consideration.
- 45.1. — In general.
46. — Parole as right or privilege.
47. — Discretionary nature.
48. Eligibility for parole or parole consider-
ation.
- 48.1. — In general.
49. — Factors governing decision, in gen-
eral.
50. — Minimum sentence, and computa-
tion of term in general.
51. — Several sentences.
52. — Exercise of discretion in general.
53. — Guidelines or matrix; severity rat-
ing.
54. — Sentence provisions; judge's recom-
mendations.

II. PAROLE.(Cont'd)

55. Parole boards or officers.
- 55.1. — In general.
56. — Liabilities.
57. Proceedings.
- 57.1. — In general.
58. — Evidence and matters considered.
59. — Hearing and counsel.
60. — Decision; reconsideration.
61. — Reasons for decision.
62. — Review.
63. Rescission or retardation of unexecuted
parole.
64. Parole conditions; validity.
- 64.1. — In general.
65. — Acceptance or rejection by prisoner.
66. Status and rights of parolee.
67. Effect of parole; duration.
68. Supervision of parolee; search.
69. Violation of parole; revocation in gener-
al.
70. Grounds for revocation; defenses.
- 70.1. — In general.
71. — Subsequent offenses.
72. Effect of delinquency; reimprisonment
and redetermination of sentence.
- 72.1. — In general.
73. — Recommitment for balance of origi-
nal sentence.
74. — Concurrent or consecutive service
of sentences.
75. — Good conduct allowances and other
credits.
76. — Crediting parole time.
77. Procedure for revocation.
- 77.1. — In general.
78. — Jurisdiction and authority.
79. — Waiver of jurisdiction.
80. — Detention, arrest, and bail.
81. — Warrant.
82. — Time for proceedings, in general.
83. — Time for arrest or warrant.
84. — Time for hearing; speedy trial.
85. — Hearing in general; notice.
86. — Necessity for hearing.
87. — Preliminary hearing.
88. — Requisites of hearing.
89. — Counsel.
90. — Evidence and fact questions.

285. PARENT AND CHILD**II. PAROLE.**(Cont'd)

- 91. — Determination and record; effect.
- 92. — Review.
- 93. Discharge from parole.

285. PARENT AND CHILD**SUBJECTS INCLUDED**

- Parental relation
- Nonmarital children and their rights and disabilities in general
- Legitimation and delegitimation of nonmarital children
- Legal proceedings for determination of questions of status and ascertainment of parentage
- Rights, powers, duties, and liabilities of parents and children, as between themselves as to others, incident to the existence of the relation
- Legal proceedings relating to such relation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Abused, neglected, dependent, or delinquent children, see **INFANTS**
- Adoption, see **ADOPTION**
- Concealing birth or death of children, see **OBSTRUCTING JUSTICE** ¶151
- Custody of children, whether adult, minor, marital, or nonmarital, see **CHILD CUSTODY**
- Disabilities of infancy and protection of persons and property of children, see **INFANTS**
- Gifts to nonmarital children, see **GIFTS**
- Government assistance to needy and dependent children, see **PUBLIC ASSISTANCE**
- Guardianship, see **GUARDIAN AND WARD**
- Inheritance by, from, or through nonmarital children, see **DESCENT AND DISTRIBUTION II(C)**
- Particular wrongs and offenses, even though affecting parental rights, see **CRIMINAL**

LAW ¶45.10, **SEDUCTION**, and other specific topics

Remedy and procedure in habeas corpus, see **HABEAS CORPUS**

Support of children, whether adult, minor, marital, or nonmarital, see **CHILD SUPPORT**

Termination of parental rights, see **INFANTS**

Testamentary provisions as to nonmarital children, see **WILLS**

I. IN GENERAL, ¶101–130.

II. PROCEEDINGS TO DETERMINE PARENTAGE, ¶131–200.

(A) **IN GENERAL**, ¶131–191.

(B) **ADMINISTRATIVE PROCEEDINGS**, ¶192–194.

(C) **INTERJURISDICTIONAL ISSUES**, ¶195–200.

III. EVIDENCE OF PARENTAGE, ¶201–240.

(A) **IN GENERAL**, ¶201–220.

(B) **EXPERIMENTS AND TESTS; SCIENTIFIC EVIDENCE**, ¶221–230.

(C) **WEIGHT AND SUFFICIENCY**, ¶231–240.

IV. ASSISTED REPRODUCTION; SURROGATE PARENTING, ¶241–260.

V. EMANCIPATION, ¶261–280.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION, ¶281–380.

(A) **IN GENERAL**, ¶281–310.

(B) **SERVICES AND EARNINGS OF CHILD**, ¶311–320.

(C) **PARENT'S CLAIMS FOR INJURIES TO CHILD**, ¶321–350.

(D) **CHILD'S CLAIMS FOR INJURIES TO PARENT**, ¶351–360.

(E) **PARENT'S LIABILITY FOR TORTS OR MISCONDUCT OF CHILD**, ¶361–380.

VII. NONPARENTS IN PARENTAL ROLE, ¶381–396.

I. IN GENERAL.

101. In general.

102. Parentage and legitimacy in general.
Inheritance rights, see DESCENT AND DISTRIBUTION II(C).

103. Paternity in general.

104. Maternity in general.

105. Number of parents.

106. Formalization of relation; legitimation.

285. PARENT AND CHILD

Inheritance rights, see DESCENT AND DISTRIBUTION ¶67.9.

- 107. — In general.
- 108. — By legislative act.
- 109. Marriage of parents, effect on child's legitimacy.
- 110. — In general.
- 111. — Invalid, annulled, or dissolved marriage.
- 112. — Informal or non-traditional marriage or union.
- 113. Disestablishment of relation; delegitimation.
- 114. Recognition or acknowledgment of relation.
- Inheritance rights, see DESCENT AND DISTRIBUTION* ¶67.9.
- 115. — In general.
- 116. — Registration.
- 117. — Challenges to validity; revocation.
- 118. Estoppel and waiver.
- 119. — In general.
- 120. — To deny or disestablish paternity; paternity by estoppel.
- 121. — To assert or establish paternity.
- 122. — To deny or assert maternity.
- 123. Name of child.

II. PROCEEDINGS TO DETERMINE PARENTAGE.

(A) IN GENERAL.

- 131. In general.
- 132. Paternity proceedings in general.
- 133. Legitimation proceedings in general.
- 134. Disestablishment or delegitimation proceedings in general.
- 135. Bar or abatement of proceedings; defenses.
- 136. — In general.
- 137. — Death of child, mother, or putative father.
- 138. — Other proceedings, effect of.
- 139. Compromise, settlement, or release.
- 140. Who may maintain proceedings; parties; standing.
- 141. — In general.
- 142. — Father.
- 143. — Mother.
- 144. — Spouse or other partner of parent.
- 145. — Child.
- 146. — Government entities and officials.

II. PROCEEDINGS TO DETERMINE PARENTAGE.(Cont'd)

- 147. — Other particular parties.
- 148. Jurisdiction.
- 149. — In general.
- 150. — Personal jurisdiction.
- 151. Venue.
- 152. Process and notice.
- 153. Appearance.
- 154. Pleading.
- 155. Time for proceedings; limitations and laches.
- 156. Course and conduct of proceedings in general.
- 157. Discovery.
- 158. Counsel.
- 159. Dismissal before trial.
- 160. Trial or hearing.
- 161. — In general.
- 162. — Time of trial or hearing; continuance and adjournment.
- 163. — Questions of law or fact.
- 164. — Instructions.
- 165. — Verdict or findings.
- 166. New trial or rehearing.
- 167. Judgment or order.
- 168. — In general.
- 169. — Summary judgment.
- 170. — Default judgment.
- 171. — Rendition and entry.
- 172. — Operation and effect.
- 173. Relief from judgment; opening, modifying, and vacating.
- 174. — In general.
- 175. — Default judgment.
- 176. Sentence on criminal conviction.
- 177. Appeal or review.
- 178. — In general.
- 179. — Mode of review.
- 180. — Persons entitled to seek review or assert arguments; parties; standing.
- 181. — Decisions reviewable.
- 182. — Presentation and reservation in lower court of grounds of review.
- 183. — Scope and extent of review.
- 184. — Harmless and reversible error.
- 185. — Determination and disposition.
- 186. Costs.
- 187. — In general.

285. PARENT AND CHILD**II. PROCEEDINGS TO DETERMINE PARENTAGE.(Cont'd)**

- 188. — Attorney fees.
- 189. — Appeal or review.

(B) ADMINISTRATIVE PROCEEDINGS.

- 192. In general.
- 193. Particular cases.

(C) INTERJURISDICTIONAL ISSUES.

- 195. In general.
- 196. What law governs.
- 197. Jurisdiction of forum court.
- 198. Foreign decrees and orders.

III. EVIDENCE OF PARENTAGE.**(A) IN GENERAL.**

- 201. In general.
- 202. Judicial notice.
- 203. Presumptions and burden of proof.
- 204. — In general.
- 205. — As to paternity; presumed fatherhood.
 - (1). In general.
 - (2). Particular cases.
- 206. — As to maternity.
- 207. Admissibility.
- 208. — In general.
- 209. — Testimony, admissions, and declarations of mother.
- 210. — Character and conduct of mother.
- 211. — Testimony, admissions, and declarations of putative father.
- 212. — Character and conduct of putative father.
- 213. — Intimacy and intercourse between mother and putative or presumed father.
- 214. — Resemblance of child to putative father.
- 215. Degree of proof.

(B) EXPERIMENTS AND TESTS; SCIENTIFIC EVIDENCE.

- 221. In general.
- 222. Necessity; right to obtain, compel, or discover.
- 223. — In general; hearing.
- 224. — As to third persons.
- 225. — Sanctions; contempt.

III. EVIDENCE OF PARENTAGE.(Cont'd)

- 226. Manner of obtaining.
- 227. Agreements.
- 228. Competency and examination of experts.
- 229. Presumptions and burden of proof.

(C) WEIGHT AND SUFFICIENCY.

- 231. In general.
- 232. As to paternity.
- 233. — In general.
- 234. — Particular cases.
- 235. As to maternity.

IV. ASSISTED REPRODUCTION; SURROGATE PARENTING.

- 241. In general.
- 242. Consent in general.
- 243. Contracts and agreements in general.
- 244. Donors of biological material; status, rights, duties, and liabilities.
- 245. Gestational carriers; status, rights, duties, and liabilities.
- 246. Spouses or other partners of donors and carriers.
- 247. Collection, storage, and disposition of biological material.
Experimentation, see ABORTION AND BIRTH CONTROL ¶125.
- 248. — In general.
- 249. — Embryos.
- 250. Posthumous children.

V. EMANCIPATION.

- 261. In general.
- 262. Grounds; factors considered.
- 263. — In general.
- 264. — Particular cases in general.
- 265. — Age; attainment of majority.
- 266. — Marriage.
- 267. — Enlistment in armed forces.
- 268. — Incarceration or other institutionalization.
- 269. — Consent or agreement.
- 270. — Abandonment, relinquishment, or renunciation.
- 271. Partial or total emancipation.
- 272. Proceedings.
- 273. — In general.
- 274. — Evidence in general.
- 275. — Presumptions and burden of proof.

285. PARENT AND CHILD**V. EMANCIPATION.(Cont'd)**

276. — Questions of law or fact.
 277. — Appeal and review.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.**(A) IN GENERAL.**

281. In general.
 282. Familial and procreative rights in general.
 283. Care, custody, and control of child; child raising.
See also CHILD CUSTODY.
 284. — In general.
 285. — Obligations of parenthood; duty to protect child.
Right of action against parent and parent-child immunity, see ¶303, 368. Duties owed to third persons, see ¶363. Duties incident to custody award, see CHILD CUSTODY III. Duty to support, maintain, or provide for child, see CHILD SUPPORT.
 286. — Restraint, discipline, and punishment.
 287. Property and contracts of child.
 288. Claims or rights of action of child.
 289. — In general.
 290. — Compromise, settlement, waiver, and release.
 291. Transactions between parent and child.
 292. — In general.
 293. — Conveyances and sales.
 294. — Contracts.
 295. — Gifts.
 296. — Advancements.
 297. Adult or emancipated children in general.
 298. Care or support of parent by child.
 299. Agency of child for parent.
 300. Debts and funeral expenses.
 301. Actions and proceedings.
 302. — In general.
 303. — Right of action; parent-child immunity.
 (1). In general.
 (2). Right of action by child or child's representatives against parent.
Duties owed by parent to child, and breach thereof, see ¶285, 286. Duties owed by parent to third persons, see ¶363.
 (3). Derivative and third-party claims against parent.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.(Cont'd)

- (4). Right of action by parent against child.
 304. — Pleading.
 305. — Parties.
 306. — Evidence.
 307. — Questions for jury.
 308. — Instructions.

(B) SERVICES AND EARNINGS OF CHILD.
 311. In general.
 312. Notice or demand to child's employer.
 313. Voluntary relinquishment or assignment of right.
 314. Termination, loss, or forfeiture of right.
 315. Contracts for service.
 316. Actions for services or wages of child.

(C) PARENT'S CLAIMS FOR INJURIES TO CHILD.
 321. In general.
 322. Existence, nature, and grounds of action.
 323. — In general.
 324. — Loss of child's services, society, or consortium.
 325. — Medical and other expenses.
 326. — Interference with parent-child relationship.
 327. — Adult or emancipated children.
 328. Persons entitled to sue or recover; standing.
 329. — In general.
 330. — Medical and other expenses.
 331. Persons liable.
 332. Conditions precedent.
 333. Defenses in general.
 334. Waiver.
 335. Limitations and laches.
 336. Contributory negligence of parent.
 337. Contributory negligence of child.
 338. Proceedings.
 339. — In general.
 340. — Pleading.
 341. — Parties.
 342. — Evidence.
 343. — Questions for jury.
 344. — Instructions.

287. PARTIES**(D) CHILD'S CLAIMS FOR INJURIES TO PARENT.**

- 351. In general.
- 352. Existence, nature, and grounds of action.
- 353. — In general.
- 354. — Loss of parent's services, society, or consortium.
- 355. — Adult or emancipated children.
- 356. Persons entitled to sue or recover; standing.
- 357. Persons liable.
- 358. Proceedings.

(E) PARENT'S LIABILITY FOR TORTS OR MISCONDUCT OF CHILD.

- 361. In general.
- 362. Agency of child for parent, liability premised on.
- 363. Duty of parent; parent's own negligence.
- 364. — In general.
- 365. — Supervision, restraint, or control of child in general.
- 366. — Propensities or proclivities of child; prior conduct.
- 367. — Dangerous activities and instrumentalities; negligent entrustment.
- 368. Right of action; parent-child immunity.
- 369. Adult or emancipated children.
- 370. Proceedings.
- 371. Criminal liability; offenses.

VII. NONPARENTS IN PARENTAL ROLE.

- 381. In general.
- 382. Persons in loco parentis in general.
- 383. De facto parents in general.
- 384. Psychological parents in general.
- 385. Equitable parents in general.
- 386. Proceedings to determine status.
- 387. Rights, duties, and liabilities.
- 388. — In general.
- 389. — Liability for injuries to child.
- 390. — Liability for torts or misconduct of child.
- 391. Relatives of parent and child.
- 392. — In general.
- 393. — Grandparents and grandchildren.
- 394. Spouses or other partners of parents.
- 395. — In general.
- 396. — Stepparents and stepchildren.

286. PARLIAMENTARY LAW**SUBJECTS INCLUDED**

Rules and usages governing the proceedings of deliberative bodies
 Their sources and principles
 Their application in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Proceedings of—

Congress and other legislative bodies, see UNITED STATES, STATES, TERRITORIES

Conventions or caucuses to nominate candidates for election, see ELECTION LAW

Directors or trustees of corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS, FINANCE, BANKING, AND CREDIT, and other specific topics

Municipal councils or other governing bodies, see MUNICIPAL CORPORATIONS

Other bodies, boards, etc., see PUBLIC EMPLOYMENT and other specific topics

1. Nature and authority in general.
2. Sources and principles.
3. Adoption and application.
4. Constitution and organization of deliberative body.
5. Order, mode, and forms of proceedings.
6. Rulings of presiding officer and appeals therefrom.
7. Review of proceedings.

287. PARTIES**SUBJECTS INCLUDED**

Persons in whose names civil actions in general may or must be brought or defended
 Joinder of plaintiffs and defendants
 Designation of parties in the proceedings
 Effect of nonjoinder, misjoinder, misnomer, or other defects as to parties, and objec-

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tions therefor, taken by demurrer, motion or otherwise

Representation of numerous or absent parties

Amendments as to parties, and other changes in parties, by intervention, adding new parties, substitution, etc.

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Assignment of cause of action before suit, effect of, see **ASSIGNMENTS**

Bankruptcy or insolvency proceedings, parties in, see **BANKRUPTCY, CREDITORS' REMEDIES** ¶1183

Civil proceedings other than actions, parties to, see **HABEAS CORPUS, MANDAMUS**, and topics relating to other special proceedings

Criminal prosecutions, parties to, see **CRIMINAL LAW, INDICTMENTS AND CHARGING INSTRUMENTS**

Competency of parties as witnesses, see **WITNESSES**

Death or defect of parties as ground of abatement of actions, see **ABATEMENT AND REVIVAL**

Dismissal as to one or more co-parties, see **PRETRIAL PROCEDURE**

Federal courts, parties in actions in, see **FEDERAL CIVIL PROCEDURE**

Interpleading, see **INTERPLEADER**

Particular classes of actions, parties to, see **CONTRACTS, TORTS**, and other specific topics

Particular classes of persons, capacity to sue or to defend, see **ALIENS, IMMIGRATION, AND CITIZENSHIP, INFANTS**, and other specific topics

Review proceedings, parties to, see **APPEAL AND ERROR**, and other specific topics

Right to sue and liability to be sued, see **ACTION**, and topics relating to particular causes of action

Suits in equity or admiralty, parties to, see **EQUITY, ADMIRALTY**

Wills, proceedings for probate or contest of, see **WILLS**

I. PLAINTIFFS, ¶1–20.5.

I. PLAINTIFFS—Cont'd

(A) **PERSONS WHO MAY OR MUST SUE, ¶1–12.**

(B) **JOINDER, ¶13–20.5.**

II. DEFENDANTS, ¶21–35.

(A) **PERSONS WHO MAY OR MUST BE SUED, ¶21–23.**

(B) **JOINDER, ¶24–35.**

III. REPRESENTATIVE AND CLASS ACTIONS, ¶35.1–35.89.

(A) **IN GENERAL, ¶35.1–35.30.**

(B) **PROCEEDINGS, ¶35.31–35.60.**

(C) **PARTICULAR CLASSES REPRESENTED, ¶35.61–35.89.**

IV. NEW PARTIES AND CHANGE OF PARTIES, ¶36–65.

V. DESIGNATION AND DESCRIPTION, ¶66–74.

VI. DEFECTS, OBJECTIONS, AND AMENDMENT, ¶75–97.

I. PLAINTIFFS.

(A) PERSONS WHO MAY OR MUST SUE.

1. Capacity and interest in general.
2. Statutory provisions.
3. Nature and extent of interest.
4. Nominal and use plaintiffs in general.
5. Right to sue in name of another.
6. Real party in interest.
 - (1). In general.
 - (2). Who is real party in interest.
7. Persons holding legal title.
 - (1). In general.
 - (2). Trustees and persons with whom contract is made for benefit of others.
8. Persons expressly authorized by statute.

(B) JOINDER.

13. Persons who may join.
14. — In general.
15. — Actions on contract.
16. — Actions for tort.
17. Persons who must join.
18. — In general.
19. — Actions on contract.
20. — Actions for tort.
- 20.5. Right to use name of another as co-plaintiff.

287. PARTIES**II. DEFENDANTS.****(A) PERSONS WHO MAY OR MUST BE SUED.**

- 21. Capacity and interest in general.
- 22. Trustees and others holding legal title.

(B) JOINDER.

- 24. Persons who may be joined.
- 25. — In general.
- 26. — Actions on contract.
- 27. — Actions for tort.
- 28. Persons who must be joined.
- 29. — In general.
- 30. — Actions on contract.
- 31. — Actions for tort.
- 32. — Persons necessary to complete determination.
- 33. — Persons legally represented.
- 34. — Grounds for omitting or dispensing with parties.
- 35. Making defendant party refusing to join as plaintiff.

III. REPRESENTATIVE AND CLASS ACTIONS.**(A) IN GENERAL.**

- 35.1. In general.
- 35.3. Virtual representation.
- 35.5. Factors, grounds, objections, and considerations in general.
- 35.7. Superiority, manageability, and need.
- 35.9. Discretion of court.
- 35.11. Impracticability of joining all members of class; numerosity.
- 35.13. Representation of class; typicality.
- 35.15. Effect of mootness.
- 35.17. Community of interest; commonality.
- 35.19. Hybrid or spurious class actions.
- 35.21. Classes of defendants.

(B) PROCEEDINGS.

- 35.31. In general; certification in general.
- 35.33. Evidence; pleadings and supplementary material.
- 35.35. Hearing and determination.
- 35.37. Consideration of merits.
- 35.39. Time for proceeding and determination.
- 35.41. Identification of class; subclasses.
- 35.43. Notice and communications.
- 35.44. — In general.

III. REPRESENTATIVE AND CLASS ACTIONS.(Cont'd)

- 35.45. — Parties responsible; expense.
- 35.47. — Sufficiency.
- 35.49. Decertification.
- 35.51. Options; withdrawal.

(C) PARTICULAR CLASSES REPRESENTED.

- 35.61. In general.
- 35.63. Constitutional challenges and actions against government in general.
- 35.65. Taxpayers and license holders or applicants.
- 35.67. Antitrust or trade regulation cases.
- 35.69. Tort cases; environmental interests; mass or toxic tort.
- 35.71. Consumers, purchasers, borrowers, or debtors.
- 35.73. Insurance claimants.
- 35.75. Employees.
- 35.77. Heirs and testamentary or trust beneficiaries.
- 35.79. Landowners; tenants; condominium interests.
- 35.81. Prisoners and inmates.
- 35.83. Racial, religious, or ethnic groups in general.
- 35.85. Bondholders, stockholders, investors, or depositors.
Excludes stockholders' derivative actions, see CORPORATIONS AND BUSINESS ORGANIZATIONS VIII.
- 35.87. Students, parents, or faculty.
- 35.89. Welfare and social security claimants.

IV. NEW PARTIES AND CHANGE OF PARTIES.

- 36. Nature and grounds of change in general.
- 37. Intervention.
- 38. — In general.
- 39. — Actions in which intervention is authorized.
- 40. — Persons entitled to intervene.
 - (1). In general.
 - (2). Interest in subject of action in general.
 - (3). Grantees or purchasers.
 - (4). Creditors.
 - (5). Assignees.
 - (6). Lienors.
 - (7). Persons primarily or ultimately liable.

287. PARTIES**IV. NEW PARTIES AND CHANGE
OF PARTIES.(Cont'd)**

- 41. — Grounds.
- 42. — Time for intervention.
- 43. — Necessity for leave of court.
- 44. — Application and proceedings thereon.
- 45. — Order granting or refusing leave.
- 46. — Mode and form of intervention.
- 47. — Rights and liabilities of interveners.
- 48. — Proceedings in cause after intervention.
- 49. Bringing in new parties.
- 50. — In general.
- 51. — Necessity and grounds.
 - (.5). In general.
 - (1). Necessity.
 - (2). Discretion of court.
 - (3). Actions in which new parties may be brought in.
 - (4). Persons who may be brought in, and grounds in general.
 - (5). Assignees or purchasers pendente lite.
- 52. — Time for bringing in new parties and laches.
- 53. — Application and proceedings thereon.
- 54. — Mode of bringing in parties.
- 55. — Rights and liabilities of parties brought in.
- 56. — Proceedings in cause after adding parties.
- 57. Substitution.
- 58. — In general.
- 59. — Persons entitled to be substituted and grounds therefor.
 - (1). In general.
 - (2). Assignees, purchasers, and other successors in interest.
 - (3). Executor or administrator and heirs or legatees.
 - (4). Change as to character or right in which party sues or is sued.
- 60. — Time for substitution, and laches.
- 61. — Application and proceedings thereon.
- 62. — Mode of making substitution.
- 63. — Rights of parties substituted and proceedings in cause after substitution.

**IV. NEW PARTIES AND CHANGE
OF PARTIES.(Cont'd)**

- 64. Change of position as plaintiff or defendant.
- 65. Striking out parties.
 - (1). In general.
 - (2). Entire change of parties.
 - (3). Effect of striking out parties, and proceedings in cause thereafter.

V. DESIGNATION AND DESCRIPTION.

- 66. Names of individuals in general.
- 67. Wrong or assumed names.
- 68. Designation of same person by two or more names.
- 69. Description of parties in general.
- 70. Nominal and use plaintiffs.
- 71. Parties in particular capacity.
- 72. Unknown parties.
- 72.1. — In general.
- 73. — Designation by fictitious names.
- 74. — Description.

**VI. DEFECTS, OBJECTIONS,
AND AMENDMENT.**

- 75. Defects and grounds of objection as to parties in general.
 - (1). In general.
 - (2). Necessity of objection, and effect of failure to object in general.
 - (3). Time for objection.
 - (4). Mode of objection in general.
 - (5). Plea in abatement.
 - (6). Answer.
 - (7). Demurrer.
 - (8). Demurrer or answer.
 - (9). Sufficiency and effect of objection.
- 76. Want of capacity or interest.
 - (.5). In general.
 - (1). Necessity and mode of objection, and effect of failure to object in general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). General denial.
 - (5). Demurrer.
 - (6). Demurrer or answer.
 - (7). Sufficiency and effect of objection.
- 77. Nonjoinder of party plaintiff.
- 78. — In general.

288. PARTITION**VI. DEFECTS, OBJECTIONS, AND
AMENDMENT.(Cont'd)**

- 79. — Operation and effect.
- 80. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). General issue or general denial.
 - (5). Demurrer.
 - (6). Demurrer or answer.
 - (7). Sufficiency and effect of objection.
- 81. Nonjoinder of party defendant.
- 81.1. — In general.
- 82. — Operation and effect.
- 83. — Parties entitled to object.
- 84. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). Demurrer.
 - (5). Demurrer or answer.
 - (6). Sufficiency and effect of objection.
- 85. Misjoinder of parties plaintiff.
- 85.1. — In general.
- 86. — Operation and effect.
- 87. — Parties entitled to object.
- 88. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Answer.
 - (3). Demurrer.
 - (4). Demurrer or answer.
 - (5). Sufficiency and effect of objection.
- 89. Misjoinder of parties defendant.
- 89.1. — In general.
- 90. — Operation and effect.
- 91. — Parties entitled to object.
- 92. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Answer.
 - (3). Demurrer.
 - (4). Demurrer or answer.
- 93. Improper intervention, addition, or substitution of parties.
 - (1). In general.

**VI. DEFECTS, OBJECTIONS, AND
AMENDMENT.(Cont'd)**

- (2). Necessity, mode, and time of objection.
- 94. Misnomer or misdescription.
 - (1). In general.
 - (2). Necessity, mode, and time of objection.
 - (3). Sufficiency of objection.
- 95. Amendment of defects.
 - (1). In general.
 - (2). Nominal and use plaintiffs.
 - (3). Misnomer or misdescription in general.
 - (4). Names of individuals.
 - (5). Names of corporations or partners.
 - (6). Parties in particular capacity.
 - (7). Time for amendment, and proceedings.
- 96. Waiver of defects and objections.
 - (1). In general.
 - (2). Want of capacity or interest.
 - (2.5). Nonjoinder of party plaintiff.
 - (3). Nonjoinder of party defendant.
 - (4). Misjoinder of parties plaintiff.
 - (4.5). Misjoinder of parties defendant.
 - (5). Intervention, addition, or substitution of parties.
 - (6). Misnomer or misdescription.
- 97. Cure of defects by subsequent proceedings.
 - (1). In general.
 - (2). Aider by verdict or judgment.

288. PARTITION**SUBJECTS INCLUDED**

Division of property, real or personal, among co-owners, by mutual consent or by judicial proceedings

How partition may be made by act of the parties, agreements therefor, and conveyances to effect such partition

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Nature and scope of remedy by action for partition in general

What property may be partitioned

Grounds of such actions and defenses thereto
Jurisdiction to make partition and proceedings therefor

Incidental relief

Making actual partition or sale instead thereof

Judgments or decrees and operation and effect thereof

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Rights and liabilities of co-owners in general,
see PROPERTY IV

- I. BY ACT OF PARTIES, ¶1–9.
II. ACTIONS FOR PARTITION, ¶10–117.
 (A) RIGHT OF ACTION AND DEFENSES, ¶10–33.
 (B) PROCEEDINGS AND RELIEF, ¶34–117.

I. BY ACT OF PARTIES.

1. Statutory provisions.
2. Property and estates therein subject to partition.
3. Capacity and authority of parties.
4. Agreements as to partition.
5. Parol partition.
6. Partition by arbitration.
7. Sale for partition.
8. Conveyances.
9. Operation and effect.
 - (1). In general.
 - (2). Action to confirm.

II. ACTIONS FOR PARTITION.

(A) RIGHT OF ACTION AND DEFENSES.

10. Nature and scope of remedy in general.
11. Statutory provisions.
12. Property and estates therein subject to partition.
 - (1). In general.
 - (2). Legal or equitable estates.
 - (3). Homestead.
 - (4). Estates subject to charges and contingencies.

II. ACTIONS FOR PARTITION.(Cont'd)

- (5). Life estates, remainders, and re-versions.
 13. Cotenancy or other common interest of parties.
 14. Right to and grounds for partition in general.
 15. Title to support action.
 16. — In general.
 17. — Establishment or determination of disputed title.
 - (1). In general.
 - (2). Determination in action for partition.
 18. Possession to sustain action.
 19. — In general.
 20. — Effect of adverse possession.
 21. Effect of provisions of deed or will.
 22. Effect of agreements as to partition or of partition by act of parties.
 23. Probable injury to property, inconvenience, or hardship.
 24. Discretion of court.
 25. Conditions precedent.
 - (1). In general.
 - (2). Settlement of estate of deceased ancestor.
 26. Defenses in general.
 27. Pendency of other action or proceeding.
 28. Abatement on death of party.
 29. Successive actions.
 30. Property to be included in action.
 31. Cross-actions.
 32. Persons entitled to sue.
 33. Persons against whom action may be brought.
- (B) PROCEEDINGS AND RELIEF.**
34. Form of remedy.
 35. Statutory provisions.
 36. Partition by probate court in distribution of estate.
 37. Jurisdiction.
 38. — In general.
 39. — Courts of equity.
 40. — Probate courts.
 41. — Of subject-matter.
 42. — Of the person.

288. PARTITION**II. ACTIONS FOR PARTITION.(Cont'd)**

- 43. Venue.
- 44. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 45. Parties.
- 46. — In general.
- 46.1. — Necessary parties.
- 46.2. — Proper parties.
- 47. — Plaintiffs.
- 48. — Defendants.
- 49. — Intervention, addition, and substitution.
- 50. — Defects, objections, and amendment.
- 51. Process and appearance.
- 52. Injunction.
- 53. Receiver.
- 54. Pleading.
- 54.1. — In general.
- 55. — Bill, complaint, or petition.
 - (1). In general.
 - (2). Allegations as to parties, title, interests, and possession.
 - (3). Description of property.
 - (4). Prayer for relief.
- 56. — Plea or answer.
- 57. — Cross-bill, cross-complaint, or counterclaim.
- 58. — Reply and subsequent pleadings.
- 59. — Demurrer.
- 60. — Amended and supplemental pleadings.
- 61. — Exhibits and bills of particulars.
- 62. — Issues, proof, and variance.
- 63. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 64. Dismissal before trial or hearing.
- 65. Scope of inquiry and powers of court at trial in general.
- 66. Proceedings preliminary to trial.
- 67. Mode and conduct of trial in general.
- 68. Reference on default or submission of rights.
- 69. Reference for trial of issues.
- 70. Submission of issues to jury.

II. ACTIONS FOR PARTITION.(Cont'd)

- 71. Verdict and findings.
- 72. New trial or rehearing.
- 73. Interlocutory judgment or decree in general.
- 74. Determination as to rights of parties in property.
- 75. Determination as to necessity and extent of partition.
- 76. Determination as to mode of partition.
- 76.1. — In general.
- 77. — Actual partition or sale.
 - (1). In general.
 - (2). Consent or objection as to sale.
 - (3). Grounds for determination.
 - (4). Pleading and proof.
- 78. — Mode of actual partition in general.
- 79. — Reference of question.
- 80. Relief incidental to partition.
- 81. — In general.
- 82. — Preliminary relief.
- 83. — Adjustment of claims and equities between parties.
- 84. — Owelty, and lien therefor.
- 85. — Allowances and charges for improvements.
- 86. — Allowances and charges for rents and profits.
- 87. — Reimbursement of payments and advances.
- 88. — Incumbrances on property.
- 89. — Pleading and proof to authorize incidental relief.
- 90. — Set-off of mutual claims.
- 91. Officers, commissioners, and referees to make partition or sale.
- 92. Proceedings to make actual partition.
- 93. Bonds or other security on actual partition.
- 94. Report or return on actual partition.
 - (1). In general.
 - (2). Objections and exceptions.
 - (3). Hearing on and disposition of report.
- 95. Final judgment or decree for actual partition, and enforcement thereof.
- 96. Conveyances on actual partition.
- 97. Enforcement of liens or charges on property partitioned.
- 98. Taking land at appraised value.

288. PARTITION**II. ACTIONS FOR PARTITION.(Cont'd)**

- 99. Sale.
- 100. — In general.
- 101. — Mortgaged or otherwise incumbered property.
- 102. — Manner and conduct in general.
- 103. — Persons who may purchase.
- 104. — Bids, and performance and enforcement thereof.
 - (1). In general.
 - (2). Refusal to comply with bid.
- 105. — Report or return.
- 106. — Confirmation.
- 107. — Opening, vacating, and resale.
- 108. — Collateral attack.
- 109. — Title, rights, and liabilities of purchaser.
 - (1). In general.
 - (2). Liens and incumbrances.
 - (3). Liabilities of purchaser.
 - (4). Defects in title or deficiency in quantity.
 - (5). Possession and rents.
 - (6). Defects and irregularities in proceedings.
 - (7). Rights on avoidance of sale.
- 110. — Conveyance to purchaser.
- 111. Disposition of proceeds of sale.
 - (1). In general.
 - (2). Necessity that purchaser see to application.
 - (3). Liens and charges.
 - (4). Proceedings for distribution.
- 112. Final judgment on sale in partition, and enforcement thereof.
- 113. Review.
- 114. Fees and costs.
 - (1). In general.
 - (2). Persons, property, and funds liable.
 - (3). Amount, rate, and items in general.
 - (4). Attorney fees in general.
 - (5). Effect of contests and employment of counsel by different parties.
 - (6). Taxation and judgment.
 - (7). Payment or enforcement.
- 115. Operation and effect.

II. ACTIONS FOR PARTITION.(Cont'd)

- 115.1. — In general.
- 116. — Actual partition.
 - (1). In general.
 - (2). Effect on liens and incumbrances.
- 117. — Sale in partition.

289. PARTNERSHIP**SUBJECTS INCLUDED**

Relation created by the combination of persons as principals to contribute property or services in a joint undertaking for joint profit

Nature and incidents of such a combination considered as a firm

Rights, powers, duties, and liabilities of partners as between themselves and as to others, incident to the relation

Legal proceedings for enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Associations not dependent on the personality of their members, or formed for purposes other than gain, whether incorporated or unincorporated, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS, and other specific topics

Banking partnerships, see FINANCE, BANKING, AND CREDIT IV

Husband and wife, partnership between, see MARRIAGE AND COHABITATION

Joint ventures, see JOINT VENTURES

Joint or common ownership of property, see PROPERTY IV

Law firms, see ATTORNEYS AND LEGAL SERVICES IV

Mining partnerships, see MINES AND MINERALS ⇨96

Partnerships issuing stock, see CORPORATIONS AND BUSINESS ORGANIZATIONS ⇨3576

289. PARTNERSHIP

- I. THE RELATION IN GENERAL, ¶401–510.
 - (A) IN GENERAL, ¶401–420.
 - (B) CREATION AND REQUISITES IN GENERAL, ¶421–444.
 - (C) PARTNERSHIP AGREEMENT, ¶445–460.
 - (D) NATURE AND CREATION OF RELATION AS TO THIRD PARTIES, ¶461–480.
 - (E) COMMENCEMENT AND DURATION, ¶481–490.
 - (F) EVIDENCE AND DETERMINATION, ¶491–510.
- II. PARTNERSHIP NAME, ¶511–524.
- III. PARTNERSHIP PROPERTY, ¶525–534.
- IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS, ¶535–634.
 - (A) IN GENERAL, ¶535–540.
 - (B) NATURE OF OBLIGATION AMONG PARTNERS, ¶541–584.
 - (C) INDIVIDUAL TRANSACTIONS AND CONFLICTS OF INTEREST, ¶585–600.
 - (D) ACTIONS BETWEEN PARTNERS OR BETWEEN PARTNERS AND PARTNERSHIP, ¶601–634.
- V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES, ¶635–800.
 - (A) IN GENERAL; REPRESENTATION OF PARTNERSHIP BY PARTNERS, ¶635–700.
 - (B) NATURE AND EXTENT OF PARTNERSHIP LIABILITIES, ¶701–710.
 - (C) APPLICATION OF ASSETS TO LIABILITIES, ¶711–730.
 - (D) ACTIONS BY OR AGAINST PARTNERSHIPS OR PARTNERS, ¶731–800.
- VI. ALTERATION IN MEMBERSHIP OR BUSINESS, ¶801–920.
 - (A) IN GENERAL, ¶801–850.
 - (B) DEATH OF PARTNER AND SURVIVING PARTNERS, ¶851–900.
 - (C) MERGERS, ACQUISITIONS, AND REORGANIZATIONS, ¶901–920.
- VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING, ¶921–1060.
 - (A) IN GENERAL; CAUSES AND GROUNDS OF DISSOLUTION, ¶921–940.
 - (B) RIGHTS, POWERS, AND LIABILITIES AFTER DISSOLUTION, ¶941–980.

- VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING—Cont'd
 - (C) DISTRIBUTION, ACCOUNTING, AND SETTLEMENT AMONG PARTNERS AND THEIR REPRESENTATIVES, ¶981–1004.
 - (D) ACTIONS FOR DISSOLUTION AND ACCOUNTING, ¶1005–1060.
- VIII. FOREIGN PARTNERSHIPS, ¶1061–1070.
- IX. LIMITED PARTNERSHIPS, ¶1071–1290.
 - (A) IN GENERAL, ¶1071–1094.
 - (B) FORMATION AND ORGANIZATION, ¶1095–1130.
 - (C) RELATION AMONG PARTNERS, ¶1131–1170.
 - (D) RELATION OF PARTNERS TO THIRD PARTIES, ¶1171–1194.
 - (E) MERGERS, ACQUISITIONS, AND REORGANIZATIONS, ¶1195–1220.
 - (F) DISSOLUTION, SETTLEMENT, AND ACCOUNTING, ¶1221–1280.
 - (G) FOREIGN LIMITED PARTNERSHIPS, ¶1281–1290.
- X. LIMITED LIABILITY PARTNERSHIPS, ¶1291–1330.
- XI. OFFENSES AND PROSECUTIONS, ¶1331–1333.

I. THE RELATION IN GENERAL.**(A) IN GENERAL.**

- 401. In general.
- 402. What law governs.
- 403. Constitutional and statutory provisions.
- 404. — In general.
- 405. — Purpose and construction in general.
- 406. — Validity.
- 407. — Retroactivity.
- 408. What is a partnership.
- 409. Partnership as distinct entity.
- 410. — In general.
- 411. — Aggregate or entity theory.
- 412. Scope and extent of partnership in general.
- 413. Powers of partnership as a body.

(B) CREATION AND REQUISITES IN GENERAL.

- 421. In general.
- 422. Community of interest.

289. PARTNERSHIP**I. THE RELATION IN GENERAL.(Cont'd)**

- 423. — In general.
- 424. — Ownership of business in general.
- 425. — Ownership of property.
- 426. — Sharing profits and losses.
 - (1). In general.
 - (2). Sharing profits only.
 - (3). Sharing losses only.
 - (4). Manner of sharing profits; partnership distinguished from other transactions.
 - (5). — In general.
 - (6). — As interest on or in repayment of debt; partnership or loan.
 - (7). — As consideration for sale of property; partnership or sale.
 - (8). — As rent; partnership or lease.
 - (9). — As compensation for services in general; partnership or employment relationship.
 - (10). — In addition to salary or compensation.
- 427. — Sharing gross receipts.
- 428. — Sharing expenses.
- 429. — Sharing control or management of business.
- 430. Mutual agency.
- 431. Subject matter or purpose.
- 432. — In general.
- 433. — Business or profit motive.
- 434. — Ordinary or commercial partnerships.
- 435. — Professional partnerships.
- 436. Partnership distinguished from other business entities.
- 437. — In general.
- 438. — Corporations.
- 439. — Joint ventures.
- 440. Subpartnership.
- 441. Estoppel to allege or deny partnership as to partners.

(C) PARTNERSHIP AGREEMENT.

- 445. In general.
- 446. Necessity of agreement.
- 447. Form, requisites, and validity of agreement.
- 448. — In general.

I. THE RELATION IN GENERAL.(Cont'd)

- 449. — Oral agreements.
- 450. — Implied agreements.
- 451. — Use of words “partner” or “partnership”.
- 452. — Capacity of parties.
- 453. — Intent.
- 454. — Assent of parties in general.
- 455. — Consideration.
- 456. — Mistake, misrepresentation, or fraud.
- 457. — Illegality.
- 458. Executory agreements to form partnership.
- 459. Modification.

(D) NATURE AND CREATION OF RELATION AS TO THIRD PARTIES.

- 461. In general.
- 462. Nature and grounds of liability.
- 463. Agreements in general.
- 464. Sharing profits and losses.
- 465. Conduct of and participation in business.
- 466. Particular agreements and transactions.
- 467. Estoppel by holding out as partner.
- 468. — In general.
- 469. — Ostensible partner in general.
- 470. — Acts and conduct constituting holding out.
- 471. — Knowledge and consent of purported partner.
- 472. — Knowledge and reliance of third party.
- 473. — Operation and effect.
- 474. Dormant and secret partners.
- 475. Contemplated partnerships.
- 476. Defective associations or corporations.
- 477. Promoters of corporations or other entities.
- 478. Individuals transacting business in partnership or corporate name.

(E) COMMENCEMENT AND DURATION.

- 481. In general.
- 482. Time when partnership begins.
- 483. Term fixed by agreement.
- 484. Continuance after term; extension or renewal.
- 485. Partnership at will.

289. PARTNERSHIP**(F) EVIDENCE AND DETERMINATION.**

- 491. In general.
- 492. Presumptions and burden of proof.
- 493. Admissibility.
- 494. — In general.
- 495. — As between partners.
- 496. — As against third parties.
- 497. — As against partners.
- 498. — Proof of holding out as partner.
- 499. — Commencement and duration of partnership.
- 500. Weight and sufficiency.
- 501. — In general.
- 502. — As between partners.
- 503. — As against third parties.
- 504. — As against partners.
- 505. — Proof of holding out as partner.
- 506. — Commencement and duration of partnership.
- 507. Questions of law or fact.

II. PARTNERSHIP NAME.

- 511. In general.
- 512. Names that may be adopted.
- 513. — In general.
- 514. — Words indicating partnership.
- 515. — Names of partners.
- 516. — Conflicting names; similarity or confusion.
- 517. Filing certificate of fictitious or assumed name.
- 518. — In general.
- 519. — Necessity.
- 520. Change of name.
- 521. Actions.

III. PARTNERSHIP PROPERTY.

- 525. In general.
- 526. Personal property.
- 527. Real property.
- 528. — In general.
- 529. — Real property considered as personal property.
- 530. Conversion of joint property into separate property.

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS.**(A) IN GENERAL.**

- 535. In general.
- 536. Who are partners.
- 537. Partnership interest.
- 538. — In general.
- 539. — Nature of interest.

(B) NATURE OF OBLIGATION AMONG PARTNERS.

- 541. In general.
- 542. Construction of partnership agreement in general.
- 543. Fiduciary duty.
- 544. — In general.
- 545. — Good faith.
- 546. — Loyalty.
- 547. — Fair dealing.
- 548. — Disclosure of information to other partners.
- 549. Capital of partnership.
- 550. — In general.
- 551. — Capital contribution of partners; consideration for partnership interest.
- 552. — Advances and loans to partnership by partners.
- 553. — Interest on capital, advances, and balances.
- 554. — Effect of partnership agreement.
- 555. Assumption by partnership of debts of partner.
- 556. Partnership property and funds.
- 557. — In general.
- 558. — Interests of partners.
- 559. — Possession and disposition.
- 560. — Misappropriation or conversion.
- 561. — Sale or transfer of partnership property.
- 562. — Effect of partnership agreement.
- 563. Control and management of partnership business.
- 564. — In general.
- 565. — Business judgment rule.
- 566. — Managing partner.
- 567. — Books and records.
 - (1). In general.
 - (2). Books of account.
 - (3). Access and inspection.

289. PARTNERSHIP**IV. MUTUAL RIGHTS, DUTIES, AND
LIABILITIES OF PARTNERS.(Cont'd)**

- 568. — Accounting as to partnership business.
 - (1). In general.
 - (2). Right to accounting.
 - (3). Duty to account.
 - (4). Proceedings.
- 569. — Effect of partnership agreement.
- 570. Services by partners to partnership.
- 571. — In general.
- 572. — Compensation.
- 573. — Reimbursement of expenses and losses.
- 574. Sharing of profits and losses.
- 575. — In general.
- 576. — Interests in profits.
 - (1). In general.
 - (2). In proportion to contributions.
 - (3). Distributions of profits to partners.
 - (4). Effect of partnership agreement.
- 577. — Liabilities for expenses and losses.
 - (1). In general.
 - (2). In proportion to contributions or profits.
 - (3). Effect of partnership agreement.
- 578. — Liabilities for negligence and misconduct.
- 579. — Indemnity from liability to third parties; advancement of litigation expenses.
- 580. — Lien of partner on partnership property.
- 581. — Contribution between partners.
- 582. Rights and powers of dormant partners.
- 583. Rights and powers of subpartners.

**(C) INDIVIDUAL TRANSACTIONS AND
CONFLICTS OF INTEREST.**

- 585. In general.
- 586. Acquiring adverse title or interest.
- 587. Individual profits or benefits from partnership business.
- 588. — In general.
- 589. — Usurping partnership opportunities.
- 590. Engaging in other business.
- 591. — In general.
- 592. — Engaging in competing business.

**IV. MUTUAL RIGHTS, DUTIES, AND
LIABILITIES OF PARTNERS.(Cont'd)**

- 593. Dealings between partner and partnership.
- 594. Dealings between copartners.
- 595. — In general.
- 596. — Purchase of copartner's interest in partnership.
- 597. Fraud as to partnership or copartners.
- 598. Partner in different partnerships.
- 599. Disclosure and ratification.

**(D) ACTIONS BETWEEN PARTNERS OR BETWEEN
PARTNERS AND PARTNERSHIP.**

- 601. In general.
- 602. Grounds of action and form of remedy.
- 603. — In general.
- 604. — Necessity of accounting or settlement.
- 605. — Breach of partnership agreement.
- 606. — Breach of fiduciary duty.
- 607. — Compensation for services.
- 608. — Partnership transactions not involving an account.
- 609. — Contribution.
- 610. — Transactions independent of partnership.
- 611. Demand before action.
- 612. Defenses in general.
- 613. Set-off and counterclaim.
- 614. Jurisdiction and venue.
- 615. Persons entitled to sue; standing.
- 616. Time to sue and limitations.
- 617. Parties.
- 618. Attachment or garnishment.
- 619. Appointment of receiver.
- 620. Pleading.
- 621. Evidence.
- 622. — In general.
- 623. — Presumptions and burden of proof.
- 624. — Admissibility.
- 625. — Weight and sufficiency.
- 626. Trial.
- 627. Damages or amount of recovery.
- 628. Judgment.
- 629. Execution and enforcement of judgment.
- 630. Costs and attorney fees.

289. PARTNERSHIP**V. RIGHTS AND LIABILITIES
AS TO THIRD PARTIES.****(A) IN GENERAL; REPRESENTATION OF
PARTNERSHIP BY PARTNERS.**

- 635. In general.
- 636. Application of principle of agency to partnerships.
- 637. — In general.
- 638. — Partnership acts through partners.
- 639. — Acting within scope of partnership business.
- 640. Nature and grounds of partner's authority.
- 641. — In general.
- 642. — Actual or apparent authority.
- 643. — Express or implied authority.
- 644. — Commercial character of partnership.
- 645. — Usage or course of business.
- 646. Majority and minority partners.
- 647. Managing partner.
- 648. Restrictions on partner's authority.
- 649. — In general.
- 650. — By partnership agreement.
- 651. — By notice of dissent.
- 652. Partner in different partnerships.
- 653. Individual interest or credit of partner in general.
- 654. Use of partnership or individual name.
- 655. Use of seal.
- 656. Particular transactions.
- 657. — In general.
- 658. — Disposition of partnership property in general.
- 659. — Contracts in general.
- 660. — Contracts of employment.
- 661. — Purchases, sales, and warranties.
- 662. — Collections and payments in general.
- 663. — Payment of individual debt.
- 664. — Borrowing or loaning money.
- 665. — Mortgages or pledges.
 - (1). In general.
 - (2). For partnership debt.
 - (3). For individual debt.
- 666. — Negotiable instruments.
 - (1). In general.
 - (2). For partnership debt.
 - (3). For individual debt.

**V. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 667. — Indemnity, guaranty, or suretyship.
- 668. — Compromises and releases.
- 669. — Submission to arbitration.
- 670. — Conduct of litigation.
- 671. — Confession of judgment.
- 672. — Assignment for benefit of creditors.
- 673. — Representations or admissions.
- 674. — Wrongful acts; imputed liability.
 - (1). In general.
 - (2). Acting within scope of partnership business in general.
 - (3). Misappropriation or conversion.
 - (4). Embezzlement.
 - (5). Fraud.
 - (6). Negligence.
- 675. Fraud as to partners.
- 676. Estoppel to deny partner's authority.
- 677. — In general.
- 678. — Estoppel of partnership by acts or conduct of partners.
- 679. — Knowledge or notice.
- 680. Ratification and repudiation.
- 681. — In general.
- 682. — By assent.
- 683. — By acquiescence, recognition, or adoption of transaction.
- 684. — By accepting or retaining benefits.
- 685. — Knowledge or notice of facts to support ratification.
- 686. — Purchases and sales.
- 687. — Mortgages.
- 688. — Negotiable instruments.
- 689. Rights acquired by partnership.
- 690. Knowledge or notice to partner as affecting partnership; imputed knowledge.
- 691. — In general.
- 692. — Matters within scope of partnership business.
- 693. — Adverse interest.
- 694. Notice of authority of partner to person dealing with partnership.
- 695. Individual act or interest as creating individual liability.
- 696. Undisclosed partnership.
- 697. Misrepresentation as to partnership.
- 698. Dormant partners.

289. PARTNERSHIP**(B) NATURE AND EXTENT OF PARTNERSHIP
LIABILITIES.**

- 701. In general.
- 702. Joint and several liability in general.
- 703. Acts of agent or employee of partnership.
- 704. Fiduciary relations.
- 705. Property misappropriated or wrongfully obtained.
- 706. Contracts.
- 707. Torts.

(C) APPLICATION OF ASSETS TO LIABILITIES.

- 711. In general.
- 712. Marshaling partnership and individual assets in general.
- 713. Assets of partnership.
- 714. — In general.
- 715. — Rights and liens of partners as to partnership debts.
- 716. — Rights of partnership creditors through partners.
- 717. — Rights of creditors of individual partners.
- 718. — Rights and liens of partners as creditors of partnership.
- 719. — Transactions by or between partners as affecting rights of creditors.
 - (1). In general.
 - (2). Distribution of assets among partners.
 - (3). Transfer of partnership assets to copartners or to new partnership.
 - (4). Payment or security of partnership debt.
 - (5). Payment or security of individual debt.
 - (6). Payment or security by partner of individual debt.
- 720. Assets of individual partners.
- 721. — In general.
- 722. — Rights of individual creditors.
- 723. — Rights of partnership creditors.
- 724. — Rights of partnership or copartners as creditors.
- 725. — Transactions by or between partners affecting rights of creditors.
- 726. Partners in different partnerships.

**(D) ACTIONS BY OR AGAINST PARTNERSHIPS
OR PARTNERS.**

- 731. In general.
- 732. Capacity of partnership to sue and be sued in general.
- 733. Nature and form of remedy.
- 734. Jurisdiction.
- 735. Venue.
- 736. Time to sue; limitations and laches.
- 737. Use of partnership name.
- 738. Persons entitled to sue; standing.
- 739. Parties.
- 740. — In general.
- 741. — Partnership or partners as plaintiffs.
 - (1). In general.
 - (2). Joinder.
- 742. — Partnership or partners as defendants.
 - (1). In general.
 - (2). Joinder.
- 743. — Partnerships having common member.
- 744. — Intervention of partners.
- 745. Alteration or dissolution of partnership pending suit.
- 746. Process.
- 747. — In general.
- 748. — Necessity, form, and requisites.
- 749. — Place and time for service.
- 750. — Mode of service in general.
- 751. — Person who should or may be served.
 - (1). In general.
 - (2). Partners not served.
- 752. — Substituted or constructive service.
 - (1). In general.
 - (2). Service by mail.
 - (3). Service on secretary of state or other public official.
- 753. — Requisites and sufficiency of return of service.
- 754. — Objections to service and waiver thereof.
- 755. — Motions to set aside service.
- 756. Appearance.
- 757. Discontinuance or dismissal as to partner.
- 758. Attachment or garnishment against partnership or partners.

289. PARTNERSHIP**V. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 759. — In general.
- 760. — Property or interests subject.
- 761. — Grounds for proceeding.
- 762. — Proceedings to procure levy, lien, and priorities.
- 763. — Proceedings to support and enforce.
- 764. Receivers.
- 765. Pleading.
- 766. — In general.
- 767. — Allegation and denial of partnership.
- 768. — Verification.
- 769. — Amendment.
- 770. — Defenses.
- 771. — Variance between pleadings and proof.
- 772. Evidence.
- 773. — In general.
- 774. — Presumptions and burden of proof.
- 775. — Admissibility.
- 776. — Weight and sufficiency.
- 777. Trial.
- 778. — In general.
- 779. — Instructions.
- 780. — Questions of law or fact.
- 781. — Verdict and findings.
- 782. Damages or amount of recovery.
- 783. Judgment.
- 784. — In general.
- 785. — Joint or several judgment.
- 786. — Judgment when some partners were not served with process.
- 787. — Proceedings to vacate.
- 788. Execution and enforcement of judgment.
- 789. — In general.
- 790. — Application of partnership assets.
- 791. — Application of individual assets.
- 792. — Remedies for improper levy.
- 793. — Levy, lien, and custody of property.
- 794. — Title and rights of purchaser.
- 795. — Charging orders.
- 796. — Proceedings for enforcement of judgment against partner not served with process.
- 797. Costs and attorney fees.

**VI. ALTERATION IN MEMBERSHIP
OR BUSINESS.****(A) IN GENERAL.**

- 801. In general.
- 802. Provisions of partnership agreement in general.
- 803. Change of membership in partnership in general.
- 804. — In general.
- 805. — Admission of new partner.
 - (1). In general.
 - (2). Fraud and misrepresentation.
- 806. — Removal or expulsion.
- 807. Transfer of partner's interest.
- 808. — In general.
- 809. — Transfer to copartner.
 - (1). In general.
 - (2). Fraud and misrepresentation.
- 810. — Transfer to third party.
 - (1). In general.
 - (2). Restrictions on transfer in general.
 - (3). Right of first refusal of other partners.
 - (4). Fraud and misrepresentation.
- 811. Continued use of partnership name.
- 812. Good will of old partnership.
- 813. Competition of retiring partner with new partnership.
- 814. Assets of old partnership.
- 815. — In general.
- 816. — Rights of retiring partner.
- 817. — Rights of continuing partners or new partnership.
- 818. — Rights of incoming or succeeding partners.
- 819. Obligations of old partnership.
- 820. — In general.
- 821. — Liabilities of retiring partner.
- 822. — Liabilities of continuing partners or new partnership.
- 823. — Liabilities of incoming or succeeding partners.
- 824. Assumption of obligations of old partnership.
- 825. — In general.
- 826. — By continuing partners.
- 827. — By new partnership.

289. PARTNERSHIP**VI. ALTERATION IN MEMBERSHIP
OR BUSINESS.(Cont'd)**

- 828. — By incoming or succeeding partners.
- 829. — Effect on rights of creditors.
- 830. — Retiring partner as surety for payment of partnership debts.
- 831. Interest of retiring partner in assets of new partnership.
- 832. Liabilities of retiring partner for acts and obligations of continuing partners or new partnership.
- 833. Actions after change of membership.
- 834. — In general.
- 835. — Jurisdiction and venue.
- 836. — Persons entitled to sue; standing.
- 837. — Time to sue; limitations and laches.
- 838. — Defenses.
- 839. — Parties.
- 840. — Pleading.
- 841. — Evidence.
- 842. — Damages or amount of recovery.
- 843. — Trial.
- 844. — Judgment.
- 845. — Costs and attorney fees.

**(B) DEATH OF PARTNER AND
SURVIVING PARTNERS.**

- 851. In general.
- 852. Effect of partnership agreement in general.
- 853. Right and duty to liquidate partnership affairs in general.
- 854. Collection and disposition of assets.
- 855. — In general.
- 856. — Right to possession and control of partnership assets and effects.
- 857. — Collection of assets.
- 858. — Disposition of assets in general.
- 859. — Mortgage of partnership property.
- 860. — Assignment for benefit of creditors.
- 861. — Payment of individual debts.
- 862. — Application of payments made to or by surviving partner.
- 863. Real property of partnership.
- 864. Obligations of partnership.
- 865. Obligations incurred in winding up business.

**VI. ALTERATION IN MEMBERSHIP
OR BUSINESS.(Cont'd)**

- 866. Rights and liabilities of survivors as to estate of deceased partner.
- 867. Bond of surviving partners.
- 868. Surviving partner as executor or administrator of deceased partner's estate.
- 869. Statutory partnership administrators.
- 870. Compensation for winding up business.
- 871. Right or duty of surviving partners to buy interest of deceased partner and continuance of business of partnership.
- 872. — In general.
- 873. — Valuation.
- 874. — Provisions of partnership agreement in general.
- 875. — Directions of deceased partner's will.
- 876. — Accounting and settlement by survivors' continuing business.
- 877. — Continued use of partnership name.
- 878. — Good will of partnership.
- 879. Actions by or against surviving partners or representatives of deceased partners.
- 880. — In general.
- 881. — Nature and form of remedy.
- 882. — Jurisdiction and venue.
- 883. — Persons entitled to sue; standing.
- 884. — Defenses.
- 885. — Conditions precedent.
- 886. — Time to sue; limitations and laches.
- 887. — Parties.
- 888. — Attachment.
- 889. — Receivers.
- 890. — Pleading.
- 891. — Evidence.
- 892. — Damages or amount of recovery.
- 893. — Trial.
 - (1). In general.
 - (2). Instructions.
 - (3). Questions of law or fact.
 - (4). Verdict and findings.
- 894. — Judgment.
- 895. — Execution.
- 896. — Costs and attorney fees.

289. PARTNERSHIP**(C) MERGERS, ACQUISITIONS,
AND REORGANIZATIONS.**

- 901. In general.
- 902. Agreements for merger.
- 903. Conversion from or into other type of business entity.

**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING.****(A) IN GENERAL; CAUSES AND GROUNDS
OF DISSOLUTION.**

- 921. In general.
- 922. Presumption of continuance of relation.
- 923. Provisions for dissolution in partnership agreement in general.
- 924. Election of partner to dissolve.
- 925. Expiration of term.
- 926. Mutual consent.
- 927. Withdrawal of partner.
- 928. Transfer of partner's interest.
- 929. Admission of new partner.
- 930. Completion of enterprise.
- 931. Abandonment or impossibility of enterprise.
- 932. War.
- 933. Sale of entire property of partnership.
- 934. Insolvency of partnership or partner.
- 935. Dissensions among partners.
- 936. Misconduct of partner.
- 937. Death or disability of partner.
- 938. Forcible dissolution.
- 939. Wrongful dissolution.

**(B) RIGHTS, POWERS, AND LIABILITIES
AFTER DISSOLUTION.**

- 941. In general.
- 942. Status of partnership after dissolution in general.
- 943. Effect of dissolution.
- 944. — In general.
- 945. — As to fiduciary relation of partners.
- 946. — As to powers of partners.
- 947. — As to rights and liabilities of third parties.
- 948. — As to pending proceedings and judgments.
- 949. Continuance of partnership for purposes of winding up.
- 950. — In general.

**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING.(Cont'd)**

- 951. — Powers and acts of liquidating partner in general.
- 952. — Use of partnership name in liquidation.
- 953. — Control and disposition of partnership property.
- 954. — Collections and payments.
- 955. — Performance of contracts of partnership.
- 956. — Contracting new obligations in general.
- 957. — Making or indorsing negotiable instruments.
- 958. — Compromises and releases.
- 959. Notice of dissolution.
- 960. — In general.
- 961. — Necessity.
- 962. — Sufficiency.
- 963. — Operation and effect.
- 964. Holding out as partner after dissolution.
- 965. Representations or admissions.
- 966. Wrongful acts.
- 967. Actions by or against partners or partnership after dissolution.
- 968. — In general.
- 969. — Jurisdiction and venue.
- 970. — Persons entitled to sue; standing.
- 971. — Time to sue; limitations and laches.
- 972. — Pleading.
- 973. — Evidence.
- 974. — Trial.
 - (1). In general.
 - (2). Instructions.
 - (3). Questions of law or fact.
- 975. — Damages or amount of recovery.
- 976. — Judgment.
- 977. — Costs and attorney fees.

**(C) DISTRIBUTION, ACCOUNTING, AND
SETTLEMENT AMONG PARTNERS AND
THEIR REPRESENTATIVES.**

- 981. In general.
- 982. Necessity of settlement in general.
- 983. Who is entitled to require accounting.
- 984. Who is liable to account.
- 985. Property and transactions to be included.

289. PARTNERSHIP**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING.(Cont'd)**

- 986. — In general.
- 987. — Claims by or against partnership.
- 988. — Claims between partners.
- 989. Inventory and valuation.
- 990. Payment of partnership debts.
- 991. Apportionment of losses.
- 992. Repayment to partners of advances.
- 993. Division and distribution of capital.
- 994. Division and distribution of profits.
- 995. Compensation for services in winding up business.
- 996. Interest on balance due partner after dissolution.
- 997. Lien for balance.
- 998. Right to partnership name, good will, and books of account.
- 999. Private accounting and settlement.
- 1000. — In general.
- 1001. — Agreements for settlement.
 - (1). In general.
 - (2). Performance or breach.
- 1002. — Requisites and validity.
 - (1). In general.
 - (2). Mistake or fraud.
- 1003. — Operation and effect.
 - (1). In general.
 - (2). Conclusiveness.
 - (3). Laches in disputing settlement.

**(D) ACTIONS FOR DISSOLUTION
AND ACCOUNTING.**

- 1005. In general.
- 1006. Nature and scope of remedy.
- 1007. Grounds of action.
- 1008. Conditions precedent.
- 1009. Defenses.
- 1010. Form of remedy.
- 1011. Jurisdiction.
- 1012. Venue.
- 1013. Persons entitled to sue; standing.
- 1014. Time to sue; limitations and laches.
- 1015. Parties.
- 1016. Process and appearance.
- 1017. Receivership.
- 1018. — In general.
- 1019. — Grounds for or objections to appointment.
- 1020. — Appointment of receiver.

**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING.(Cont'd)**

- 1021. — Effect of appointment and title acquired by receiver.
- 1022. — Continuance of business.
- 1023. — Accounting by receiver.
- 1024. Effect of bringing action.
- 1025. Pleading.
- 1026. — In general.
- 1027. — Answer or other responsive pleading.
- 1028. — Amended and supplemental pleadings.
- 1029. — Variance between pleadings and proof.
- 1030. Evidence.
- 1031. — In general.
- 1032. — Presumptions and burden of proof.
- 1033. — Admissibility.
- 1034. — Weight and sufficiency.
- 1035. Trial or hearing.
- 1036. — In general.
- 1037. — Questions of law or fact.
- 1038. Interlocutory judgment or decree.
- 1039. Proceedings on accounting.
- 1040. — In general.
- 1041. — Reference to take and state account.
- 1042. — Charges and credits.
- 1043. — Set-off and counterclaim.
- 1044. — Form and requisites of account.
- 1045. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1046. — Vouchers and proof of payment.
- 1047. — Partnership books of account and accounts rendered or stated.
- 1048. — Decision, findings, or report on accounting.
- 1049. — Operation and effect of accounting.
- 1050. — Actions to open or set aside accounting.
- 1051. Collection of assets.
- 1052. Sale or other disposition of property.
- 1053. Presentation and allowance of claims.

289. PARTNERSHIP**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING.(Cont'd)**

- 1054. Objections and exceptions.
- 1055. Final judgment or decree.
- 1056. Costs and attorney fees.

VIII. FOREIGN PARTNERSHIPS.

- 1061. In general.
- 1062. Obtaining authorization to do business in state.
- 1063. — In general.
- 1064. — What constitutes doing business.
- 1065. Actions by or against foreign partnership.

IX. LIMITED PARTNERSHIPS.**(A) IN GENERAL.**

- 1071. In general.
- 1072. Nature and characteristics in general.
- 1073. — In general.
- 1074. — Partnership in commendam.
- 1075. Constitutional and statutory provisions.
- 1076. — In general.
- 1077. — Purpose and construction in general.
- 1078. — Validity.
- 1079. — Retroactivity.
- 1080. What law governs.
- 1081. Limited partnership distinguished from other business entities.
- 1082. — In general.
- 1083. — General partnership.
- 1084. — Limited liability company.
- 1085. — Corporation.
- 1086. Limited partnership as distinct entity.
- 1087. Disregarding entity; piercing veil.
- 1088. — In general.
- 1089. — Particular cases.
- 1090. — Actions.

(B) FORMATION AND ORGANIZATION.

- 1095. In general.
- 1096. Organizers and promoters.
- 1097. — In general.
- 1098. — Fiduciary duties.
- 1099. Partnership agreement.
- 1100. Subject matter and purpose.
- 1101. — In general.
- 1102. — Limitation of personal liability.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1103. — Unlawful purpose.
- 1104. Certificate of formation.
- 1105. — In general.
- 1106. — Form and requisites.
- 1107. — Affidavit of payment of capital.
- 1108. — Filing, recording, and publication of certificate.
- 1109. — Amendment of certificate.
- 1110. Failure to comply with statutory requirements.
- 1111. Partnership name.
- 1112. — In general.
- 1113. — Names that may be adopted.
- 1114. — Words indicating limited partnership.
- 1115. Commencement and term.
- 1116. Continuance or renewal.
- 1117. Books and records.
- 1118. Estoppel to allege or deny partnership.

(C) RELATION AMONG PARTNERS.

- 1131. In general.
- 1132. General partner.
- 1133. — In general.
- 1134. — Fiduciary duty to partnership and limited partners.
- 1135. — Breach of partnership agreement.
- 1136. — Compensation.
- 1137. — Indemnification.
- 1138. — Representation of partnership.
 - (1). In general.
 - (2). Acts and knowledge of general partner imputed to partnership.
- 1139. — Withdrawal, resignation, or removal.
- 1140. — Transfer of general partnership interest.
- 1141. Limited partners.
- 1142. — In general.
- 1143. — Capital contribution; subscription.
- 1144. — Rights in and title to partnership property.
- 1145. — Management of partnership business.
- 1146. — Services to partnership; limited partners as employees.
- 1147. — Inspection of partnership books and records.

289. PARTNERSHIP**IX. LIMITED PARTNERSHIPS.(Cont'd)**

- 1148. — Admission of new partner.
- 1149. — Withdrawal or removal.
- 1150. — Transfer of limited partnership interest.
 - (1). In general.
 - (2). Death of limited partner.
 - (3). Right of first refusal of partnership or partners.
- 1151. One person as both general and limited partner.
- 1152. Conflict of interest and self-dealing.
- 1153. Withdrawal of capital.
- 1154. Allocation and distribution of profits.
- 1155. Allocation of losses.
- 1156. Actions between partners.
- 1157. — In general.
- 1158. — Nature of remedy.
- 1159. — Derivative action.
 - (1). In general.
 - (2). Necessity and sufficiency of pre-suit demand.
 - (3). Excuse for failure to demand; futility.
- 1160. — Jurisdiction and venue.
- 1161. — Persons entitled to sue; standing.
- 1162. — Time to sue; limitations or laches.
- 1163. — Parties.
- 1164. — Process and appearance.
- 1165. — Pleading.
- 1166. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1167. — Damages or amount of recovery.
- 1168. — Trial and judgment.
- 1169. — Costs and attorney fees.

(D) RELATION OF PARTNERS TO THIRD PARTIES.

- 1171. In general.
- 1172. Liability of partners for partnership debts and acts.
- 1173. — In general.
- 1174. — General partner.
- 1175. — Limited partners.
 - (1). In general.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- (2). Contracts and securities for payment of partnership liabilities.
- (3). — In general.
- (4). — Guaranty by limited partner.
- (5). Fraud as to creditors.
- (6). Participation in management of business.
- (7). Participation in unauthorized or wrongful acts.
- (8). Extent of liability.
- (9). Debts to which liability extends.
- (10). Persons entitled to enforce liability.
- (11). Knowledge of or notice to third party of partnership status.
- (12). Joint or several liability.
- (13). Effect of insolvency.
- (14). — In general.
- (15). — Trust fund doctrine.
- (16). — Conveyances on or in contemplation of insolvency.
- (17). — Application of assets to liabilities.
- (18). — Rights of limited partners to share in assets of partnership.
- (19). Rights of creditors of limited partners.
- (20). — In general.
- (21). — Charging orders.
- 1176. Actions by or against partnership or partners.
- 1177. — In general.
- 1178. — Nature of remedy.
- 1179. — Derivative action.
 - (1). In general.
 - (2). Necessity and sufficiency of pre-suit demand.
 - (3). Excuse for failure to demand; futility.
- 1180. — Jurisdiction and venue.
- 1181. — Persons entitled to sue; standing.
- 1182. — Time to sue; limitations or laches.
- 1183. — Parties.
- 1184. — Process.
 - (1). In general.
 - (2). What partner or agent may be served.

289. PARTNERSHIP**IX. LIMITED PARTNERSHIPS.(Cont'd)**

- (3). Substituted service.
- (4). — In general.
- (5). — Service on Secretary of State or other public official.
- 1185. — Appearance.
- 1186. — Pleading.
- 1187. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1188. — Damages or amount of recovery.
- 1189. — Trial and judgment.
- 1190. — Costs and attorney fees.

(E) MERGERS, ACQUISITIONS, AND REORGANIZATIONS.

- 1195. In general.
- 1196. Mergers.
- 1197. — In general.
- 1198. — Agreements for merger.
- 1199. — Assent of limited partners; disclosure and misrepresentations.
- 1200. — Rights and remedies of dissenting limited partner.
- 1201. — Operation and effect of merger.
- 1202. — Actions by or against surviving partnership.
- 1203. Sale of substantially all partnership assets.
- 1204. Reorganizations.
- 1205. — In general.
- 1206. — Conversion of limited partnership from or into other business entity.

(F) DISSOLUTION, SETTLEMENT, AND ACCOUNTING.

- 1221. In general.
- 1222. Causes and grounds of dissolution.
- 1223. — In general.
- 1224. — Invalid or fraudulent organization.
- 1225. — Expiration of term.
- 1226. — Condition or contingency prescribed by certificate.
- 1227. — Violation of certificate or statute.
- 1228. — Mutual consent.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1229. — Completion or abandonment of enterprise.
- 1230. — Alteration in membership.
- 1231. — Dissension among partners; partner deadlock.
- 1232. — Loss or transfer of capital or property.
- 1233. — Insolvency of partnership.
- 1234. — Suspension of business.
- 1235. — Interests of partners.
- 1236. Proceedings for dissolution.
- 1237. — In general.
- 1238. — Voluntary dissolution.
- 1239. Adversary or enforced dissolution.
- 1240. — In general.
- 1241. — By or in name of state or public officers.
- 1242. — By partners.
- 1243. — By creditors.
- 1244. Operation and effect of dissolution.
- 1245. — In general.
- 1246. — Conveyances and preferences after proceedings for dissolution.
- 1247. — Continuance of partnership for purposes of winding up.
- 1248. — Reinstatement after dissolution.
- 1249. Receivership.
- 1250. — In general.
- 1251. — Appointment.
- 1252. — Powers, duties, and liabilities of receiver.
- 1253. — Actions.
- 1254. Collection of assets, enforcement of liabilities, and payment of claims.
- 1255. — In general.
- 1256. — Collection of assets.
- 1257. — Presentation and allowance of claims.
- 1258. — Priorities of claims.
- 1259. — Payment of claims.
- 1260. — Distribution to partners.
- 1261. Actions by or against partnership or partners after dissolution.
- 1262. — In general.
- 1263. — Capacity of partnership to sue and be sued.
- 1264. — Jurisdiction and venue.
- 1265. — Persons entitled to sue; standing.

289. PARTNERSHIP**IX. LIMITED PARTNERSHIPS.(Cont'd)**

- 1266. — Time to sue; limitations and laches.
- 1267. — Pleading.
- 1268. — Evidence.
- 1269. — Trial, judgment, and relief.
- 1270. — Costs and attorney fees.

(G) FOREIGN LIMITED PARTNERSHIPS.

- 1281. In general.
- 1282. Obtaining authorization to do business in state.
- 1283. — In general.
- 1284. — What constitutes doing business.
- 1285. Actions by or against foreign limited partnership.

X. LIMITED LIABILITY PARTNERSHIPS.

- 1291. In general.
- 1292. Constitutional and statutory provisions.
- 1293. What law governs.
- 1294. Nature and characteristics.
- 1295. Limited liability partnership as distinct entity.
- 1296. Disregarding entity; piercing limited liability veil.
- 1297. Formation and organization.
- 1298. — In general.
- 1299. — Partnership agreement.
- 1300. — Name.
- 1301. — Filing, registration, and recording of certificate.
- 1302. Partners and partnership interests.
- 1303. — In general.
- 1304. — Capital contribution; subscription.
- 1305. — Rights and liabilities of partners to partnership and other partners.
- 1306. — Partner's interest in partnership property.
- 1307. — Withdrawal, removal, or death of partner.
- 1308. — Transfer of partnership interest.
- 1309. — Liability for debts and acts of partnership.
- 1310. — Actions.
- 1311. Management of partnership.
- 1312. — In general.
- 1313. — Fiduciary duties to partnership and partners.

X. LIMITED LIABILITY PARTNERSHIPS.(Cont'd)

- 1314. — Liabilities for debts and acts of partnership.
- 1315. — Actions.
- 1316. Derivative actions by partners.
- 1317. Powers and duties of partnership.
- 1318. — In general.
- 1319. — Representation of partnership by partners.
- 1320. — Actions by or against partnership.
- 1321. Mergers, acquisitions, and reorganizations.
- 1322. Dissolution, accounting, and settlement.
- 1323. Foreign limited liability partnerships.

XI. OFFENSES AND PROSECUTIONS.

- 1331. In general.
- 1332. Limited partnerships.
- 1333. Limited liability partnerships.

290. PARTY WALLS**SUBJECTS INCLUDED**

Walls built partly on the land of each of two adjoining proprietors, for the common benefit of both

Statutory provisions relating thereto

Title to such walls

Rights and liabilities of adjoining owners in respect thereof

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adjoining landowners, rights and liabilities in general, see ADJOINING LANDOWNERS

Partition fences, see FENCES

- 1. Nature of property or right in general.
- 2. Structures constituting party walls.
- 3. Provisions of statutes and ordinances.
- 4. Creation and existence of right.

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- (1). In general.
- (2). Agreements of adjoining owners.
- (3). Use or acquiescence in use.
- (4). Prescription.
5. Termination of right.
6. Extent of right to use wall in general.
7. Contracts as to use of wall.
8. Rights and liabilities of adjoining owners.
 - (.5). In general.
 - (1). Right to use adjoining land in building party wall.
 - (2). Construction and operation of contracts for erection or maintenance.
 - (3). Alteration, destruction, repairs, and rebuilding of party walls.
 - (4). Encroachments.
 - (5). Injuries incident to construction, removal, or alteration of party walls.
9. Rights and liabilities of purchasers.
 - (.5). In general.
 - (1). Rights and liabilities independent of covenants or agreements in general.
 - (2). Statutory right to compensation for party walls.
 - (3). Rights and liabilities between grantor and grantee.
 - (4). Covenants and agreements as affecting purchasers in general.
 - (5). Covenants and agreements personal or running with the land.
 - (6). Conveyances subject to party wall agreements.
 - (7). Notice of party wall agreement.
10. Actions.

291. PATENTS**SUBJECTS INCLUDED**

Nature and incidents of the exclusive right of an inventor to the use of his invention, secured by government grant

Proceedings to obtain and issue of such patents
 Construction and operation of such patents
 Exercise, protection, and enforcement of the exclusive rights granted
 Infringement of patent rights
 Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY

Land patents, see PUBLIC LANDS, MINES AND MINERALS

Trademarks, see TRADEMARKS

I. IN GENERAL, ¶401–420.

II. PATENTABILITY AND VALIDITY, ¶421–850.

(A) IN GENERAL, ¶421–440.

(B) ELIGIBLE SUBJECT MATTER, ¶441–480.

(C) NOVELTY; ANTICIPATION, ¶481–650.

1. IN GENERAL, ¶481–510.

2. PARTICULAR FIELDS OF INVENTION, ¶511–570.

3. EVIDENCE AND DETERMINATION, ¶571–590.

4. PRIOR DESCRIPTION IN PRINTED PUBLICATION, ¶591–610.

5. PRIOR PUBLIC USE OR SALE, ¶611–650.

(D) UTILITY, ¶651–670.

(E) OBVIOUSNESS; LACK OF INVENTION, ¶671–810.

1. IN GENERAL, ¶671–680.

2. FACTORS CONSIDERED, ¶681–730.

3. PARTICULAR FIELDS OF INVENTION, ¶731–790.

4. EVIDENCE AND DETERMINATION, ¶791–810.

(F) OTHER CHALLENGES TO VALIDITY, ¶811–850.

III. PERSONS ENTITLED TO PATENTS, ¶851–900.

(A) IN GENERAL, ¶851–860.

(B) INVENTORSHIP AND PRIORITY, ¶861–890.

(C) JOINT INVENTORS, ¶891–900.

IV. PATENT APPLICATIONS AND PROCEEDINGS, ¶901–1310.

(A) IN GENERAL, ¶901–930.

(B) EXAMINATION, ¶931–1000.

291. PATENTS**IV. PATENT APPLICATIONS AND PROCEEDINGS—Cont'd**

- (C) ADMINISTRATIVE REVIEW, [§1001–1100](#).
- (D) CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS, [§1101–1130](#).
- (E) JUDICIAL REVIEW OR INTERVENTION, [§1131–1150](#).
- (F) CIVIL ACTION TO OBTAIN PATENT, [§1151–1180](#).
- (G) POSTISSUANCE PROCEEDINGS, [§1181–1300](#).
 - 1. IN GENERAL, [§1181–1190](#).
 - 2. DISCLAIMERS, [§1191–1200](#).
 - 3. REISSUES, [§1201–1240](#).
 - 4. EX PARTE REEXAMINATION, [§1241–1260](#).
 - 5. OTHER POSTISSUANCE PROCEEDINGS, [§1261–1270](#).
 - 6. PATENT ANNULLED OR CANCELLED AS VOID, [§1271–1280](#).
 - 7. PATENT FOUND UNENFORCEABLE FOR INEQUITABLE CONDUCT, [§1281–1300](#).
- (H) INTERNATIONAL PATENT APPLICATIONS, [§1301–1310](#).

V. CONSTRUCTION AND OPERATION OF PATENTS, [§1311–1430](#).

- (A) IN GENERAL, [§1311–1360](#).
- (B) MARKMAN CONSTRUCTION IN GENERAL, [§1361–1370](#).
- (C) PARTICULAR FIELDS OF INVENTION, [§1371–1430](#).

VI. PATENT RIGHTS AND DUTIES, [§1431–1550](#).

- (A) IN GENERAL, [§1431–1450](#).
- (B) CONTRACTS IN GENERAL, [§1451–1460](#).
- (C) ASSIGNMENTS AND OTHER TRANSFERS, [§1461–1480](#).
- (D) LICENSES AND ROYALTIES, [§1481–1510](#).
- (E) REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES, [§1511–1530](#).
- (F) GOVERNMENT RIGHTS AND DUTIES AS TO INVENTIONS, [§1531–1550](#).

VII. PATENT INFRINGEMENT, [§1551–2040](#).

- (A) IN GENERAL, [§1551–1630](#).
- (B) PARTICULAR FIELDS OF INVENTION, [§1631–1690](#).
- (C) ACTIONS, [§1691–2040](#).
 - 1. IN GENERAL, [§1691–1770](#).
 - 2. PLEADINGS AND MOTIONS, [§1771–1810](#).

VII. PATENT INFRINGEMENT—Cont'd

- (C) ACTIONS—Cont'd
 - 3. EVIDENCE, [§1811–1840](#).
 - 4. TRIAL, HEARING, AND DETERMINATION, [§1841–1860](#).
 - 5. RELIEF, [§1861–1930](#).
 - 6. JUDGMENT, [§1931–1950](#).
 - 7. APPELLATE REVIEW, [§1951–1980](#).
 - 8. COSTS AND FEES, [§1981–2010](#).
 - 9. OPERATION AND EFFECT OF DECISION, [§2011–2040](#).
- VIII. DESIGN PATENTS, [§2041–2060](#).
- IX. PLANT PATENTS, [§2061–2090](#).
 - (A) IN GENERAL, [§2061–2080](#).
 - (B) PLANT VARIETY PROTECTION, [§2081–2090](#).
- X. PATENTS ENUMERATED, [§2091–2094](#).

I. IN GENERAL.

- 401. In general.
- 402. Relation to other forms of intellectual property.
- 403. Constitutional and statutory provisions.
- 404. — In general; power of Congress.
- 405. — Purpose and construction in general.
- 406. — Validity.
- 407. — Retroactivity.
- 408. Preemption.
- 409. Administrative agencies; Patent and Trademark Office.
- 410. — In general.
- 411. — Proceedings in general.
- 412. — Rules and rulemaking.
- 413. — Regulation of agents and attorneys.
 - (1). In general.
 - (2). Misconduct; discipline.
- 414. — Officers and employees.

II. PATENTABILITY AND VALIDITY.**(A) IN GENERAL.**

- 421. In general.
- 422. Multiple conditions of patentability.
- 423. Partial invalidity.
- 424. Estoppel to dispute validity.
- 425. — In general.
- 426. — Effect of settlement or release of invalidity claims.

291. PATENTS**II. PATENTABILITY AND VALIDITY.(Cont'd)**

- 427. — Effect of revocation, abandonment, or other termination of license.
- 428. — Assignor, grantor, or licensor.
- 429. — Assignee, grantee, or licensee.
- 430. Evidence.
- 431. Questions of law or fact.

(B) ELIGIBLE SUBJECT MATTER.

- 441. In general.
- 442. Classes of invention or discovery; statutory subject matter.
- 443. — In general.
- 444. — Processes or methods.
- 445. — Products or results.
- 446. — Manufactures.
- 447. — Machines and devices.
- 448. — Compositions of matter.
- 449. — Improvements.
- 450. Exceptions to eligibility; ineligible subject matter.
- 451. — In general.
- 452. — Laws of nature, natural phenomena, and abstract ideas; fundamental principles.
- 453. — Mental steps or processes.
- 454. — Mathematical formulas and algorithms.
- 455. Use or operation of machine or apparatus as affecting process; “machine or transformation” test.
- 456. Printed matter.
- 457. Business methods.
- 458. Computers and software.
- 459. — In general.
- 460. — Data processing.
- 461. — Robots; artificial intelligence.
- 462. — Business methods; Internet applications.
- 463. Health care and medical products.
- 464. — In general.
- 465. — Drugs and medicines.
- 466. Biological subject matter; biotechnology.
- 467. — In general.
- 468. — Genes and genetic technology.
- 469. — Clones and cloning.
- 470. Evidence.
- 471. Questions of law or fact.

(C) NOVELTY; ANTICIPATION.**1. IN GENERAL.**

- 481. In general; nature and necessity.
- 482. Prior knowledge or use in general.
- 483. Prior art and relation of claimed invention thereto.
- 484. — In general.
- 485. — Construction of claims and comparison with prior art in general.
- 486. — Nature, requisites, and validity of prior art in general.
- 487. — Contents and sufficiency of prior art in general.
 - (1). In general.
 - (2). Enablement.
 - (3). Incorporation by reference.
- 488. — Extent of similarity or difference between prior art and claimed invention in general.
- 489. — Number of prior art references; combinations.
 - (1). In general.
 - (2). Single reference disclosing every element or limitation of claim.
- 490. — Inherent anticipation.
- 491. — Genus and species claims.
- 492. — Change in function, use, or purpose.
- 493. — Change in construction, operation, or result; improvements.
- 494. — Combination claims.
- 495. — Reduction to practice of prior art.
- 496. — Suggestions or statements by others as prior art.
- 497. — Accidental or unintentional production as prior art.
- 498. — Experiments and incomplete inventions as prior art.
- 499. — Unsuccessful and abandoned inventions as prior art.
- 500. — Accessibility to public of prior art; concealed inventions.
- 501. — Foreign prior art.
- 502. Prosecution history.
- 503. Relation between inventors; multiple patents to same inventor.
- 504. Timing issues.
- 505. Knowledge by inventor as to anticipation.

291. PATENTS**2. PARTICULAR FIELDS OF INVENTION.**

- 511. Aeronautics.
- 512. Air conditioning, drying, heating, and refrigeration.
- 513. Amusements and sports.
- 514. Attaching and connecting, means of.
- 515. Automobiles and vehicles.
- 516. Biological subject matter; biotechnology.
- 517. — In general.
- 518. — Genes and genetic technology.
- 519. — Clones and cloning.
- 520. Boats; watercraft; maritime matters.
- 521. Books, printing, and publishing.
- 522. Building and paving materials and methods.
- 523. Chemicals.
- 524. — In general.
- 525. — Adhesives, paints, and solvents.
- 526. — Cleaning products.
- 527. — Cosmetics, soaps, and hair-care products.
- 528. — Pesticides and herbicides.
- 529. Clothing and textiles.
- 530. Compositions and compounds.
- 531. Computers and software.
- 532. — In general.
- 533. — Data processing.
- 534. — Robots; artificial intelligence.
- 535. — Business methods; Internet applications.
- 536. Containers and packaging.
- 537. Color, ornament, and painting.
- 538. Electricity and electronics.
- 539. — In general.
- 540. — Power generation and transmission.
- 541. — Radio and telecommunications equipment.
- 542. — Television and motion pictures.
- 543. Food and food products.
- 544. Fuels, oils, and lubricants.
- 545. Furniture and household appliances.
- 546. Health care and medical products.
- 547. — In general.
- 548. — Drugs and medicines.
- 549. — Medical devices and appliances.
- 550. — Vaccines and immunization.
- 551. — Miscellaneous particular products.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 552. Hydraulics, pumps, and valves.
- 553. Internal combustion engines.
- 554. Lawn and garden equipment.
- 555. Machines and mechanical devices.
- 556. — In general.
- 557. — Industrial machinery and equipment.
- 558. — Industrial methods and processes.
- 559. — Farm machinery and equipment.
- 560. — Railroad cars, engines, and equipment.
- 561. — Miscellaneous particular machines and mechanical devices.
- 562. Measuring, testing, and indicating devices.
- 563. Metallurgy and mining.
- 564. Photography; imaging and graphic arts.
- 565. Tobacco products; lighters.
- 566. Weapons and ammunition.
- 567. Miscellaneous products and devices.
- 568. Miscellaneous processes or methods.

3. EVIDENCE AND DETERMINATION.

- 571. In general.
- 572. Presumptions and burden of proof.
- 573. Admissibility in general.
- 574. Extrinsic evidence.
- 575. Unpublished descriptions, drawings, or models.
- 576. Applications for patents.
- 577. Degree of proof.
- 578. Weight and sufficiency.
- 579. — In general.
- 580. — Oral testimony and corroboration.
- 581. — Particular products or processes.
- 582. Questions of law or fact.

4. PRIOR DESCRIPTION IN PRINTED PUBLICATION.

- 591. In general.
- 592. Requisites of publication.
- 593. — In general.
- 594. — Printing.
- 595. — Accessibility.
- 596. — Online or electronic publication.
- 597. Sufficiency of description.
- 598. — In general.
- 599. — Enablement.
- 600. — Incorporation by reference.

291. PATENTS**II. PATENTABILITY AND VALIDITY.(Cont'd)**

- 601. — Inherent anticipation.
- 602. Particular products or processes.
- 603. Evidence.
- 604. Questions of law or fact.

5. PRIOR PUBLIC USE OR SALE.

- 611. In general; nature, purpose, and elements of statutory bar.
- 612. What constitutes public use.
- 613. — In general.
- 614. — Accessibility to public.
- 615. — Commercial exploitation.
- 616. What constitutes sale.
- 617. — In general.
- 618. — Attempts to sell; offers.
- 619. — Completion of sale; acceptance and delivery.
- 620. Number of uses or sales.
- 621. Persons making use or sale.
- 622. Concealment of use or sale; secrecy.
- 623. — In general.
- 624. — Limitation, restriction, or obligation of secrecy; confidentiality.
- 625. Use or sale in foreign country.
- 626. Completion of prior invention; “ready for patenting” requirement.
- 627. — In general.
- 628. — Experimental use or purpose.
- 629. Relation between prior and claimed inventions; identity.
- 630. Timing issues.
- 631. Particular products or processes.
- 632. — In general.
- 633. — Public use.
- 634. — Sale.
- 635. Evidence.
- 636. — In general.
- 637. — Presumptions and burden of proof.
- 638. — Degree of proof.
- 639. — Weight and sufficiency.
 - (1). In general.
 - (2). Particular products or processes.
 - (3). — In general.
 - (4). — Public use.
 - (5). — Sale.
- 640. Questions of law or fact.

(D) UTILITY.

- 651. In general; nature and necessity.
- 652. Beneficial utility.
- 653. Capacity to produce result; operability.
- 654. Particular products or processes.
- 655. — In general.
- 656. — Health care, medical products, and biotechnology.
- 657. Evidence.
- 658. — In general.
- 659. — Presumptions and burden of proof.
- 660. — Degree of proof.
- 661. — Weight and sufficiency.
 - (1). In general.
 - (2). Particular products or processes.
 - (3). — In general.
 - (4). — Health care, medical products, and biotechnology.
- 662. Questions of law or fact.

(E) OBVIOUSNESS; LACK OF INVENTION.**1. IN GENERAL.**

- 671. In general.
- 672. Necessity of nonobviousness or invention.

2. FACTORS CONSIDERED.

- 681. In general; multiple factors.
- 682. Prior art and relation of claimed invention thereto.
- 683. — In general.
- 684. — Analogous art.
- 685. — Combination of prior art references; “teaching, suggestion, or motivation” test.
- 686. — Teaching away from prior art reference.
- 687. — Expectation or probability of success; predictability.
- 688. — Contributions of others; final step in series.
- 689. — Results and means of producing.
- 690. — New or specialized functions or properties.
- 691. — New use or application.
- 692. — Remedying defects or solving problems.
- 693. — Change in degree or form.
- 694. — Choice of elements; substitutions.

291. PATENTS**II. PATENTABILITY AND VALIDITY.(Cont'd)**

- 695. — Omission, duplication, or multiplication of elements.
- 696. — Combination of elements.
 - (1). In general.
 - (2). Cooperation of elements; synergism.
 - (3). New result.
- 697. Level of ordinary skill in the art.
- 698. — In general.
- 699. — Mechanical skill.
- 700. Secondary factors or considerations; objective indicia or evidence.
- 701. — In general; multiple factors.
- 702. — Imitation or copying.
- 703. — Failure of others.
- 704. — Longstanding need and solution to problems.
- 705. — Recognition or acclamation.
- 706. — Simultaneous invention.
- 707. — Skepticism of experts.
- 708. — Unexpected results.
- 709. — Commercial success.
 - (1). In general.
 - (2). Close or doubtful cases.
 - (3). Nexus to claimed invention.
 - (4). Licensing of invention.
 - (5). Absence of invention.
 - (6). Success attributable to other causes.
 - (7). Lack of success.
- 710. Subjective tests; manner in which invention was made.
- 711. — In general.
- 712. — Genius or ingenuity.
- 713. — Nature and degree of effort required.
- 714. Simplicity.
- 715. Completeness; reduction to practice.
- 716. Manner of evaluation.
- 717. — In general.
- 718. — Evaluation of claimed invention as a whole.
- 719. — Dependent and independent claims.
- 720. Time of evaluation; hindsight.

3. PARTICULAR FIELDS OF INVENTION.

- 731. Aeronautics.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 732. Air conditioning, drying, heating, and refrigeration.
- 733. Amusements and sports.
- 734. Attaching and connecting, means of.
- 735. Automobiles and vehicles.
- 736. Biological subject matter; biotechnology.
- 737. — In general.
- 738. — Genes and genetic technology.
- 739. — Clones and cloning.
- 740. Boats; watercraft; maritime matters.
- 741. Books, printing, and publishing.
- 742. Building and paving materials and methods.
- 743. Chemicals.
- 744. — In general.
- 745. — Adhesives, paints, and solvents.
- 746. — Cleaning products.
- 747. — Cosmetics, soaps, and hair-care products.
- 748. — Pesticides and herbicides.
- 749. Clothing and textiles.
- 750. Compositions and compounds.
- 751. Computers and software.
- 752. — In general.
- 753. — Data processing.
- 754. — Robots; artificial intelligence.
- 755. — Business methods; Internet applications.
- 756. Containers and packaging.
- 757. Color, ornament, and painting.
- 758. Electricity and electronics.
- 759. — In general.
- 760. — Power generation and transmission.
- 761. — Radio and telecommunications equipment.
- 762. — Television and motion pictures.
- 763. Food and food products.
- 764. Fuels, oils, and lubricants.
- 765. Furniture and household appliances.
- 766. Health care and medical products.
- 767. — In general.
- 768. — Drugs and medicines.
- 769. — Medical devices and appliances.
- 770. — Vaccines and immunization.
- 771. — Miscellaneous particular products.
- 772. Hydraulics, pumps, and valves.

291. PATENTS**II. PATENTABILITY AND VALIDITY.(Cont'd)**

- 773. Internal combustion engines.
- 774. Lawn and garden equipment.
- 775. Machines and mechanical devices.
- 776. — In general.
- 777. — Industrial machinery and equipment.
- 778. — Industrial methods and processes.
- 779. — Farm machinery and equipment.
- 780. — Railroad cars, engines, and equipment.
- 781. — Miscellaneous particular machines and mechanical devices.
- 782. Measuring, testing, and indicating devices.
- 783. Metallurgy and mining.
- 784. Photography; imaging and graphic arts.
- 785. Tobacco products; lighters.
- 786. Weapons and ammunition.
- 787. Miscellaneous products and devices.
- 788. Miscellaneous processes or methods.

4. EVIDENCE AND DETERMINATION.

- 791. In general.
- 792. Presumptions and burden of proof.
- 793. Admissibility of evidence.
- 794. Degree of proof.
- 795. Weight and sufficiency of evidence.
- 796. — In general.
- 797. — Corroboration.
- 798. — Expert opinion.
- 799. — Particular products or processes.
- 800. Questions of law or fact.

(F) OTHER CHALLENGES TO VALIDITY.

- 811. In general.
- 812. Knowledge or appreciation of inventors.
- 813. Public policy, fraud, and illegality.
- 814. Fraudulent suppression.
- 815. Ambiguity, uncertainty, or indefiniteness.
- 816. — In general.
- 817. — Particularity and distinctness.
- 818. — Lack of antecedent basis.
- 819. — Errors and omissions.
- 820. — Necessity of independent experiments.
- 821. — Principles and mode of operation.
- 822. — Particular products or processes.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 823. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.
- 824. — Questions of law or fact.
- 825. Multiple inventions included in same patent.
- 826. Multiple patents for same invention; double patenting.
- 827. — In general.
- 828. — Obvious variant of invention claimed in prior application.
- 829. — Claim not patentably distinct from prior claims.
- 830. — Genus and species.
- 831. — Restriction and election.
- 832. — Particular products or processes.
- 833. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.
- 834. — Questions of law or fact.
- 835. Multiple patents for parts of same invention.
- 836. Excessive claims.
- 837. Abandonment of invention.
- 838. — In general.
- 839. — Unclaimed subject matter; disclosure and dedication.
- 840. — Delay in making or prosecuting application for patent.
- 841. — Time of abandonment.
- 842. — Evidence.
- 843. — Questions of law or fact.
- 844. Delay between application and issue.

III. PERSONS ENTITLED TO PATENTS.**(A) IN GENERAL.**

- 851. In general.
- 852. Employers and workers.
- 853. Public employees and officials.
- 854. Assignees of inventors.
- 855. Personal representatives of deceased inventors.
- 856. Aliens.

(B) INVENTORSHIP AND PRIORITY.

- 861. In general.
- 862. Conception of invention.
- 863. Priority of filing application.

291. PATENTS**III. PERSONS ENTITLED TO
PATENTS.(Cont'd)**

- 864. Diligence.
- 865. — In general; necessity.
- 866. — What constitutes diligence.
- 867. — Suppression or concealment of invention.
- 868. Excuses for delay.
- 869. Reduction of invention to practice.
- 870. — In general.
- 871. — Demonstration of utility; tests.
- 872. — Constructive reduction to practice.
- 873. — Particular inventions.
- 874. Models, drawings, or descriptions.
- 875. Suggestions to inventor and outside aid; derivation.
- 876. Evidence.
- 877. — In general.
- 878. — Presumptions and burden of proof.
- 879. — Admissibility.
- 880. — Degree of proof.
- 881. — Weight and sufficiency.
 - (1). In general; corroboration.
 - (2). Particular cases.
- 882. Questions of law or fact.

(C) JOINT INVENTORS.

- 891. In general.
- 892. Misjoinder or nonjoinder.
- 893. Particular inventions.
- 894. Evidence.
- 895. Questions of law or fact.

**IV. PATENT APPLICATIONS
AND PROCEEDINGS.****(A) IN GENERAL.**

- 901. In general.
- 902. Requisites of application in general.
- 903. Provisional application.
- 904. Specification.
- 905. — In general.
- 906. — Best mode.
 - (1). In general.
 - (2). Subjective preference.
 - (3). Concealment.
 - (4). Particular products or processes.
 - (5). Evidence.
 - (6). Questions of law or fact.
- 907. — Written description requirement.

**IV. PATENT APPLICATIONS AND
PROCEEDINGS.(Cont'd)**

- (1). In general.
- (2). Disclosure as directed to one skilled in the art.
- (3). Possession of claimed invention.
- (4). Specific embodiment.
- (5). Genus and species.
- (6). Particular products or processes.
- (7). Evidence.
- (8). — In general.
- (9). — Weight and sufficiency.
- (10). Questions of law or fact.
- 908. — Enablement requirement.
 - (1). In general.
 - (2). Undue experimentation.
 - (3). Particular products or processes.
 - (4). Evidence in general.
 - (5). Weight and sufficiency of evidence.
 - (6). Questions of law or fact.
- 909. Drawings, specimens, models, or photographs.
- 910. Assertion of claims.
- 911. — In general.
- 912. — Preamble.
- 913. — Independent or dependent claims.
- 914. — Requisites and sufficiency.
- 915. — Functions, means, and results of invention.
- 916. — Improvement claims.
- 917. — Markush grouping.
- 918. — Combination claims.
- 919. — Step-plus-function claims.
- 920. — Process or method claims.
- 921. — Composition claims.
- 922. Signature, attestation, and oath.
- 923. Fees.
- 924. — In general.
- 925. — Maintenance fees.
- 926. — Reinstatement of expired patent.
- 927. Information disclosure statements.
- 928. Confidential status of applications.

(B) EXAMINATION.

- 931. In general.
- 932. Advancing or suspending action on applications.
- 933. Objections and protests.

291. PATENTS**IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)**

- 934. Overcoming prior art references.
- 935. — In general.
- 936. — Benefit of earlier filing date.
 - (1). In general.
 - (2). Same invention by same inventor.
 - (3). Earlier foreign application.
- 937. — Affidavit or declaration of prior invention.
- 938. Notice of rejection of claims.
- 939. Responding to examiner's action on application.
- 940. — In general.
- 941. — Affidavit or declaration traversing grounds of rejection.
- 942. — Restriction requirement.
- 943. Withdrawal or abandonment of application.
- 944. — In general.
- 945. — Revival.
- 946. Amendment of application.
- 947. — In general.
- 948. — Laches; late claiming.
- 949. — New matter disallowed.
- 950. — Correction of errors.
- 951. Renewal of application.
- 952. — In general.
- 953. — Continuation or divisional application.
- 954. Reconsideration or continued examination.
- 955. Interferences.
- 956. — In general.
- 957. — Preliminary statements, issues of interference, and amendments.
- 958. — Evidence and witnesses.
- 959. — Continuance.
- 960. — Dissolution of interferences.
- 961. — Civil actions.
- 962. Derivation proceedings; derived patents.

(C) ADMINISTRATIVE REVIEW.

- 1001. In general.
- 1002. Review by Director (formerly Commissioner) of Patent and Trademark Office.
- 1003. — In general.
- 1004. — Grounds.

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 1005. — Filing of petition or other request for review; time.
- 1006. — Hearing and determination.
- 1007. — Suspension or waiver of rules.
- 1008. Review by Patent Trial and Appeal Board (formerly Board of Patent Appeals and Interferences).
- 1009. — In general.
- 1010. — Reviewing rejection of claims.
- 1011. — Filing of appeal or other request for review; time.
- 1012. — Answer and reply.
- 1013. — Hearing and determination.
- 1014. — Rehearing or reconsideration.

(D) CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS.

- 1101. In general.
- 1102. Presumption of correctness in general.
- 1103. As to patentability and validity.
- 1104. — In general.
- 1105. — Eligible subject matter.
- 1106. — Novelty; anticipation.
- 1107. — Utility.
- 1108. — Obviousness; lack of invention.
- 1109. As to persons entitled to patents.
- 1110. — In general.
- 1111. — Inventorship and priority.
- 1112. — Interference estoppel.
- 1113. As to application and procedure in obtaining patent.
- 1114. — In general.
- 1115. — Specification.
- 1116. Sufficiency of evidence to offset effect of decision.
- 1117. — In general.
- 1118. — Corroboration.
- 1119. — Degree of proof.
- 1120. — Particular cases.

(E) JUDICIAL REVIEW OR INTERVENTION.

- 1131. In general.
- 1132. Decisions reviewable; finality.
- 1133. Persons entitled to seek review or assert arguments; parties; standing.
- 1134. Filing of appeal or other request for review; time.
- 1135. Proceedings on review; record.

291. PATENTS**IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)**

- 1136. Dismissal, withdrawal, or abandonment.
- 1137. Scope of review.
- 1138. — In general.
- 1139. — New grounds for rejection.
- 1140. — Presumption as to correctness of decision below.
- 1141. — Judicial notice.
- 1142. — Harmless error.
- 1143. Determination and disposition of cause.
- 1144. Rehearing or reconsideration.

(F) CIVIL ACTION TO OBTAIN PATENT.

- 1151. In general; nature of remedy.
- 1152. Jurisdiction and venue.
- 1153. Who may maintain action.
- 1154. Time to sue and limitations.
- 1155. Election and waiver of remedy.
- 1156. Parties; notice.
- 1157. Pleadings.
- 1158. — In general.
- 1159. — Amendment.
- 1160. — Variance between pleadings and proof.
- 1161. Discovery.
- 1162. Preliminary injunction and other interlocutory relief.
- 1163. Hearing and scope of inquiry.
- 1164. — In general.
- 1165. — Trial de novo.
- 1166. — Review of findings.
- 1167. — Exhaustion of administrative remedies.
- 1168. — Claims and other matters not presented to or passed on by Patent and Trademark Office.
- 1169. — Weight given to Patent and Trademark Office decisions.
- 1170. Evidence.
- 1171. — In general.
- 1172. — Presumptions and burden of proof.
- 1173. — Admissibility.
- 1174. — Weight and sufficiency.
- 1175. Determination and disposition.
- 1176. Costs and fees.
- 1177. Appellate review.

(G) POSTISSUANCE PROCEEDINGS.**1. IN GENERAL.**

- 1181. In general.
- 1182. Correction or amendment in general.
- 1183. Certificate of correction.
- 1184. Correction of named inventor.
- 1185. — In general; grounds.
- 1186. — Time for correction; laches.
- 1187. — Application and proceedings.
- 1188. — Court-ordered correction.

2. DISCLAIMERS.

- 1191. In general.
- 1192. Patents and claims as subjects of disclaimer.
- 1193. Grounds; relationship to reissue.
- 1194. Persons entitled to disclaim.
- 1195. Time for disclaimer; effect of delay.
- 1196. Requisites and sufficiency.
- 1197. Construction and operation.
- 1198. Terminal disclaimer.
- 1199. Effect of neglect or failure to disclaim.

3. REISSUES.

- 1201. In general; power to reissue.
- 1202. Reissue for invention disclosed in original patent.
- 1203. Grounds.
- 1204. Persons entitled to reissue.
- 1205. Time for proceedings.
- 1206. — In general.
- 1207. — Enlarged or broadened claims.
- 1208. — Laches.
- 1209. Surrender of original patent.
- 1210. Application and proceedings.
- 1211. Evidence.
- 1212. — In general.
- 1213. — Presumptions and burden of proof.
- 1214. Identity of invention.
- 1215. — In general.
- 1216. — Correction or amendment of specifications in general.
- 1217. — Enlargement of claims; new matter.
 - (1). In general.
 - (2). Claiming matter suggested but not claimed in original application.

291. PATENTS**IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)**

- (3). Claiming matter abandoned, disclaimed, or rejected on original application.
- (4). Particular inventions.
- 1218. — Narrowing claims.
- 1219. Multiple reissues; reissues for parts of original invention.
- 1220. Conclusiveness and effect of administrative decisions.
- 1221. Administrative review.
- 1222. Judicial review or intervention.
- 1223. Civil action for refusal of reissue.
- 1224. Validity of reissued patents.
- 1225. — In general.
- 1226. — Novelty; anticipation.
- 1227. — Obviousness; lack of invention.
- 1228. Construction and operation of reissued patents.
- 1229. — In general.
- 1230. — Intervening rights defense.
- 1231. — Effect as estoppel.

4. EX PARTE REEXAMINATION.

- 1241. In general.
- 1242. Citation of prior art and written statements.
- 1243. Grounds.
- 1244. Time for proceedings.
- 1245. Request for reexamination.
- 1246. Conduct of reexamination proceedings; scope of inquiry.
- 1247. Determination and order.
- 1248. Issuance of reexamination certificate.
- 1249. Conclusiveness and effect of administrative decisions.
- 1250. Administrative review.
- 1251. Judicial review or intervention.
- 1252. Validity of reexamined patent.
- 1253. Construction and operation of reexamined patents.
- 1254. — In general.
- 1255. — Intervening rights defense.
- 1256. — Effect as estoppel.

5. OTHER POSTISSUANCE PROCEEDINGS.

- 1261. In general.
- 1262. Inter partes review.
- 1263. Post-grant review.

6. PATENT ANNULLED OR CANCELLED AS VOID.

- 1271. In general.
- 1272. Grounds.
- 1273. Government suit in equity.
- 1274. Relation to other proceedings.
- 1275. Evidence.

7. PATENT FOUND UNENFORCEABLE FOR INEQUITABLE CONDUCT.

- 1281. In general.
- 1282. Materiality in general.
- 1283. Intent to deceive in general.
- 1284. Misrepresentation of material fact.
- 1285. Failure to disclose material information.
- 1286. Conduct during postissuance proceedings.
- 1287. Evidence.
- 1288. Determination.
- 1289. — In general.
- 1290. — Summary judgment.

(H) INTERNATIONAL PATENT APPLICATIONS.

- 1301. In general.
- 1302. Proceedings.

V. CONSTRUCTION AND OPERATION OF PATENTS.**(A) IN GENERAL.**

- 1311. In general.
- 1312. Intrinsic evidence in general.
- 1313. Multiple sources for construction.
- 1314. Claims and limitations; language of patent.
- 1315. — In general.
- 1316. — Language of claims in general.
- 1317. — Plain, ordinary, or customary meaning in general.
- 1318. — Construction to give validity and effect to patent and claims.
- 1319. — Claims as measure of patentee's rights.
- 1320. — Context.
- 1321. — Transitional phrases; open-ended claims.
- 1322. — Reading limitations or elements into claims, or disregarding limitations or elements.
- 1323. — Preamble.
- 1324. — Preferred embodiment in general.

291. PATENTS**V. CONSTRUCTION AND OPERATION
OF PATENTS.(Cont'd)**

- 1325. — Construction of particular claims as affected by other claims.
 - (1). In general.
 - (2). Dependent and independent claims.
 - (3). Claim differentiation.
- 1326. — Title of patent.
- 1327. Specifications and drawings; written description.
- 1328. — In general.
- 1329. — Specification as limiting or enlarging claims in general.
- 1330. — Necessity of specifying results or advantages of invention.
- 1331. — Specification disclaimer.
- 1332. — Preferred embodiment.
- 1333. — Effect of drawings, diagrams, and models.
- 1334. — Effect of reference in claims to specifications or drawings.
- 1335. Accompanying documents and proceedings in Patent and Trademark Office.
- 1336. — In general.
- 1337. — Examination of application in general.
- 1338. — Rejection and amendment of claims; prosecution history.
 - (1). In general.
 - (2). Estoppel in general; prosecution history estoppel.
 - (3). File wrapper.
 - (4). Prosecution disclaimer.
 - (5). Voluntary or unnecessary amendment or cancellation.
 - (6). Amendments not changing substance of claims.
 - (7). Erroneous rejection of claims.
 - (8). Strict or liberal construction of claims allowed.
 - (9). Extent of estoppel as affected by examiner's objections or references.
 - (10). Particular patents and claims.
- 1339. — Reexamination and inter partes review proceedings.
- 1340. Litigation affecting patent.
- 1341. State of the art.

**V. CONSTRUCTION AND OPERATION
OF PATENTS.(Cont'd)**

- 1342. Intent.
- 1343. Contemporaneous construction.
- 1344. Extrinsic evidence.
- 1345. — In general.
- 1346. — Dictionaries, encyclopedias, treatises, and other reference works.
- 1347. — Expert and inventor testimony.
- 1348. Scope and character of invention.
- 1349. — In general.
- 1350. — Primary and pioneer inventions.
- 1351. — Improvements.
- 1352. — Processes or methods.
- 1353. — Products or devices.
- 1354. — Combinations.
- 1355. — Range of equivalents.
- 1356. — Compositions of matter.
- 1357. Effect of patent as estoppel.
- 1358. Effect of patent as notice.

(B) MARKMAN CONSTRUCTION IN GENERAL.

- 1361. In general.
- 1362. Generic clauses.

(C) PARTICULAR FIELDS OF INVENTION.

- 1371. Aeronautics.
- 1372. Air conditioning, drying, heating, and refrigeration.
- 1373. Amusements and sports.
- 1374. Attaching and connecting, means of.
- 1375. Automobiles and vehicles.
- 1376. Biological subject matter; biotechnology.
- 1377. — In general.
- 1378. — Genes and genetic technology.
- 1379. — Clones and cloning.
- 1380. Boats; watercraft; maritime matters.
- 1381. Books, printing, and publishing.
- 1382. Building and paving materials and methods.
- 1383. Chemicals.
- 1384. — In general.
- 1385. — Adhesives, paints, and solvents.
- 1386. — Cleaning products.
- 1387. — Cosmetics, soaps, and hair-care products.
- 1388. — Pesticides and herbicides.
- 1389. Clothing and textiles.

291. PATENTS**V. CONSTRUCTION AND OPERATION
OF PATENTS.(Cont'd)**

- 1390. Compositions and compounds.
- 1391. Computers and software.
- 1392. — In general.
- 1393. — Data processing.
- 1394. — Robots; artificial intelligence.
- 1395. — Business methods; Internet applications.
- 1396. Containers and packaging.
- 1397. Color, ornament, and painting.
- 1398. Electricity and electronics.
- 1399. — In general.
- 1400. — Power generation and transmission.
- 1401. — Radio and telecommunications equipment.
- 1402. — Television and motion pictures.
- 1403. Food and food products.
- 1404. Fuels, oils, and lubricants.
- 1405. Furniture and household appliances.
- 1406. Health care and medical products.
- 1407. — In general.
- 1408. — Drugs and medicines.
- 1409. — Medical devices and appliances.
- 1410. — Vaccines and immunization.
- 1411. — Miscellaneous particular products.
- 1412. Hydraulics, pumps, and valves.
- 1413. Internal combustion engines.
- 1414. Lawn and garden equipment.
- 1415. Machines and mechanical devices.
- 1416. — In general.
- 1417. — Industrial machinery and equipment.
- 1418. — Industrial methods and processes.
- 1419. — Farm machinery and equipment.
- 1420. — Railroad cars, engines, and equipment.
- 1421. — Miscellaneous particular machines and mechanical devices.
- 1422. Measuring, testing, and indicating devices.
- 1423. Metallurgy and mining.
- 1424. Photography; imaging and graphic arts.
- 1425. Tobacco products; lighters.
- 1426. Weapons and ammunition.
- 1427. Miscellaneous products and devices.
- 1428. Miscellaneous processes or methods.

VI. PATENT RIGHTS AND DUTIES.**(A) IN GENERAL.**

- 1431. In general; nature of ownership of patents.
- 1432. Title of inventor before issuance of patent.
- 1433. Assignment of invention or right to patent.
- 1434. Exclusive nature of right.
- 1435. — In general.
- 1436. — Articles made, used, or purchased by others before application for patent.
- 1437. Territorial extent of rights.
- 1438. Quieting title to patents.
- 1439. Scope of exclusive rights as to making, use, or sale of invention.
- 1440. — In general.
- 1441. — Monopoly powers in general.
- 1442. — Patent exhaustion; effect of first sale.
- 1443. — Publicizing patent in marketplace.
- 1444. — Rights and powers of nonpracticing entities; “patent trolls”.
- 1445. Joint owners.
- 1446. Term and duration.
- 1447. — In general.
- 1448. — Limitation to term of prior foreign patent.
- 1449. — Extension.
 - (1). In general.
 - (2). Regulatory review.
 - (3). Adjustment for delay during prosecution.
 - (4). Civil action to obtain extension.

(B) CONTRACTS IN GENERAL.

- 1451. In general.
- 1452. Implied in fact contracts.
- 1453. Settlement or release of infringement claims.
- 1454. Construction and operation.
- 1455. Performance and breach.
- 1456. Rights and remedies of contractor.
- 1457. — In general.
- 1458. — Summary judgment.
- 1459. — Injunctions.

291. PATENTS**(C) ASSIGNMENTS AND OTHER TRANSFERS.**

- 1461. In general; assignability of patents.
- 1462. What law governs.
- 1463. Persons who may assign.
- 1464. Agreements to assign.
- 1465. Requisites and validity of assignments and grants.
- 1466. — In general.
- 1467. — Form and contents.
- 1468. — Execution and delivery.
- 1469. — Recording.
- 1470. — Annulment or cancellation.
- 1471. — Evidence of assignment.
- 1472. Construction and operation of assignments and grants.
- 1473. — In general.
- 1474. — Effect as estoppel.
- 1475. Rights and liabilities of assignees and grantees.
- 1476. Transfer on insolvency.
- 1477. Transfer by succession or inheritance.

(D) LICENSES AND ROYALTIES.

- 1481. In general; nature of license.
- 1482. What law governs.
- 1483. Persons who may grant license.
- 1484. Requisites and validity of licenses.
- 1485. — In general.
- 1486. — Express licenses.
 - (1). In general.
 - (2). Recording.
- 1487. — Implied license.
- 1488. Construction and operation of licenses.
- 1489. — In general.
- 1490. — Exclusive or nonexclusive license.
- 1491. — Duration of license.
- 1492. — Effect as estoppel.
- 1493. Revocation, forfeiture, or other termination of license.
- 1494. Assignments and sublicenses.
- 1495. Rights, remedies, and liabilities of licensees.
- 1496. — In general.
- 1497. — Breach of license agreement.
- 1498. — Actions and proceedings in general.
- 1499. — Parties.
- 1500. — Pleading.

VI. PATENT RIGHTS AND DUTIES.(Cont'd)

- 1501. — Evidence.
- 1502. — Summary judgment.
- 1503. — Trial.
- 1504. — Injunctions.
- 1505. Rights and remedies as to third parties.
- 1506. Royalties.
- 1507. — In general.
- 1508. — Rights and liabilities of parties.
 - (1). In general.
 - (2). Accrual of right to royalty.
 - (3). When liability for royalty ceases.
 - (4). Effect of patent invalidity.
 - (5). Persons liable for royalties.
 - (6). Amount of royalty.
- 1509. — Actions and proceedings.
 - (1). In general.
 - (2). Right of action and defenses.
 - (3). Time to sue and limitations.
 - (4). Parties.
 - (5). Pleading.
 - (6). Reference to master.
 - (7). Evidence.
 - (8). Trial.
 - (9). Judgment in general.
 - (10). Summary judgment.
 - (11). Remedies in general.
 - (12). Accounting for royalties.
 - (13). Injunctions.

(E) REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES.

- 1511. In general; power to control and regulate.
- 1512. Regulation of sale of patent rights.
- 1513. Validity of transactions.
- 1514. Marking patented articles; notice.
- 1515. — In general.
- 1516. — What is false marking or mis-marking.
- 1517. — Marking estoppel.
- 1518. Penalties; qui tam suits.
- 1519. — In general.
- 1520. — Actions and proceedings.
- 1521. — Evidence.
- 1522. Offenses and prosecutions.

(F) GOVERNMENT RIGHTS AND DUTIES AS TO INVENTIONS.

- 1531. In general.

291. PATENTS**VI. PATENT RIGHTS AND DUTIES.(Cont'd)**

- 1532. Inventions by government contractors.
- 1533. — In general.
- 1534. — March-in rights; compulsory licensing.
- 1535. — Waiver of agency interest in invention.
- 1536. Inventions by government employees.
- 1537. Licensing government-owned inventions.
- 1538. Secrecy orders.
- 1539. — In general.
- 1540. — Issuance and review of order.
- 1541. — License for application in foreign country.
- 1542. — Modification or rescission.
- 1543. — Compensation to inventor for withholding of patent.

VII. PATENT INFRINGEMENT.**(A) IN GENERAL.**

- 1551. In general.
- 1552. Nature and elements of injury.
- 1553. What law governs.
- 1554. Substantial identity of subject matter.
- 1555. — In general; comparison with patent claims.
- 1556. — Function, means, operation, and result.
- 1557. — Other matters.
- 1558. Existence and validity of patent.
- 1559. Intent or purpose, and knowledge.
- 1560. — In general.
- 1561. — Willful infringement.
- 1562. Patents for processes and methods.
- 1563. — In general.
- 1564. — Identity in general.
- 1565. — Substitution of equivalents.
- 1566. — Identity of result.
- 1567. — Use of process.
- 1568. Patents for machines, products, or devices.
- 1569. — In general.
- 1570. — Identity in general.
- 1571. — Identity of principle or mode of operation.
- 1572. — Identity of form or position.
- 1573. — Identity of arrangement.
- 1574. — Substitution of equivalents.

VII. PATENT INFRINGEMENT.(Cont'd)

- (1). In general.
- (2). Reverse doctrine of equivalents.
- (3). Ensnarement.
- (4). Vitiating test.
- (5). Prosecution history estoppel as limiting range of equivalents.
- 1575. — Omission of parts.
- 1576. — Addition of parts.
- 1577. — Improvements.
- 1578. — Identity of result.
- 1579. Patents for combinations.
- 1580. — In general.
- 1581. — Identity in general.
 - (1). In general.
 - (2). Identity of mode of operation.
 - (3). Identity of form.
- 1582. — Transposition of elements.
- 1583. — Substitution of equivalents.
- 1584. — Omission of elements.
- 1585. — Addition of elements.
- 1586. — Improvements.
- 1587. Patents for compositions of matter.
- 1588. — In general.
- 1589. — Identity in general.
- 1590. — Filing of applications for drug approval.
- 1591. — Substitution of ingredients.
- 1592. Utility of infringing device.
- 1593. Experimental use.
- 1594. Making, repair of, or substitute for patented article.
- 1595. Violation of restrictions on resale of patented articles sold.
- 1596. Importation and sale or use of imported article.
- 1597. Indirect infringement.
- 1598. — In general.
- 1599. — Contributory infringement in general.
- 1600. — Inducement to infringe.
- 1601. — Vicarious liability; agency.
- 1602. — Manufacture and sale of articles to be used with patented article.
- 1603. — Manufacture and sale of articles to be used in manufacture of patented article.
- 1604. Extent of use.
- 1605. — In general.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- 1606. — Experimental testing.
- 1607. — Temporary presence in United States.
- 1608. — Safe harbor for drug development.
- 1609. — Medical activity exception.
- 1610. Defenses.
- 1611. — In general.
- 1612. — Discontinuance of infringement.
- 1613. — Invalidity of patent.
- 1614. — Misconduct by patentee in general.
- 1615. — Misuse of patent.
- 1616. — Acquiescence.
- 1617. — License.
- 1618. — Prior commercial use.
- 1619. — Estoppel.
- 1620. — Waiver.

(B) PARTICULAR FIELDS OF INVENTION.

- 1631. Aeronautics.
- 1632. Air conditioning, drying, heating, and refrigeration.
- 1633. Amusements and sports.
- 1634. Attaching and connecting, means of.
- 1635. Automobiles and vehicles.
- 1636. Biological subject matter; biotechnology.
- 1637. — In general.
- 1638. — Genes and genetic technology.
- 1639. — Clones and cloning.
- 1640. Boats; watercraft; maritime matters.
- 1641. Books, printing, and publishing.
- 1642. Building and paving materials and methods.
- 1643. Chemicals.
- 1644. — In general.
- 1645. — Adhesives, paints, and solvents.
- 1646. — Cleaning products.
- 1647. — Cosmetics, soaps, and hair-care products.
- 1648. — Pesticides and herbicides.
- 1649. Clothing and textiles.
- 1650. Compositions and compounds.
- 1651. Computers and software.
- 1652. — In general.
- 1653. — Data processing.
- 1654. — Robots; artificial intelligence.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1655. — Business methods; Internet applications.
- 1656. Containers and packaging.
- 1657. Color, ornament, and painting.
- 1658. Electricity and electronics.
- 1659. — In general.
- 1660. — Power generation and transmission.
- 1661. — Radio and telecommunications equipment.
- 1662. — Television and motion pictures.
- 1663. Food and food products.
- 1664. Fuels, oils, and lubricants.
- 1665. Furniture and household appliances.
- 1666. Health care and medical products.
- 1667. — In general.
- 1668. — Drugs and medicines.
- 1669. — Medical devices and appliances.
- 1670. — Vaccines and immunization.
- 1671. — Miscellaneous particular products.
- 1672. Hydraulics, pumps, and valves.
- 1673. Internal combustion engines.
- 1674. Lawn and garden equipment.
- 1675. Machines and mechanical devices.
- 1676. — In general.
- 1677. — Industrial machinery and equipment.
- 1678. — Industrial methods and processes.
- 1679. — Farm machinery and equipment.
- 1680. — Railroad cars, engines, and equipment.
- 1681. — Miscellaneous particular machines and mechanical devices.
- 1682. Measuring, testing, and indicating devices.
- 1683. Metallurgy and mining.
- 1684. Photography; imaging and graphic arts.
- 1685. Tobacco products; lighters.
- 1686. Weapons and ammunition.
- 1687. Miscellaneous products and devices.
- 1688. Miscellaneous processes or methods.

(C) ACTIONS.**1. IN GENERAL.**

- 1691. In general; nature and grounds.
- 1692. Conditions precedent.
- 1693. Abatement on death of party.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- 1694. Joinder of causes of action.
- 1695. Persons entitled to sue; standing.
- 1696. — In general.
- 1697. — Patent owner.
- 1698. — Assignee or transferee.
- 1699. — Licensee in general.
- 1700. — Exclusive licensee.
- 1701. — Bare or nonexclusive licensee.
- 1702. Persons liable.
- 1703. — In general.
- 1704. — Joint infringers; contribution.
- 1705. — Agency in general and acts of third persons.
- 1706. — Government, agencies, and officers.
- 1707. — Corporations.
 - (1). In general.
 - (2). Parents and subsidiaries.
 - (3). Successor liability.
- 1708. — Corporate officers, agents, and stockholders.
- 1709. — Associations and partnerships.
- 1710. — Limited liability companies.
- 1711. — Licensees.
- 1712. Jurisdiction.
- 1713. — In general.
- 1714. — Legal or equitable jurisdiction.
- 1715. — Expiration of patent.
- 1716. — Personal jurisdiction in general.
- 1717. — Residence and place of infringement; long-arm jurisdiction.
 - (1). In general.
 - (2). Minimum contacts.
 - (3). Tortious act, conduct, or injury.
- 1718. — Regular and established place of business; doing business.
 - (1). In general.
 - (2). Transacting business.
- 1719. — Parents and subsidiaries; alter ego.
- 1720. — Fiduciary shield doctrine.
- 1721. — Licensing relationships.
- 1722. — Successor entities.
- 1723. — Waiver of objections.
- 1724. — Allegations in pleadings.
- 1725. — Determination of jurisdiction.
 - (1). In general.

VII. PATENT INFRINGEMENT.(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Jurisdictional discovery.
- 1726. Venue.
- 1727. — In general.
- 1728. — Residence.
- 1729. — Acts of infringement.
- 1730. — Regular and established place of business.
- 1731. — Multiple defendants.
- 1732. — Waiver of venue objection.
- 1733. Time to sue.
- 1734. — In general.
- 1735. — Limitations.
- 1736. — Laches.
 - (1). In general.
 - (2). Prosecution laches.
 - (3). Of prior owner.
 - (4). Specific period.
 - (5). Effect of prior or pending litigation.
- 1737. Parties.
- 1738. — In general.
- 1739. — Complainants.
- 1740. — Defendants.
- 1741. — Necessary and indispensable parties.
- 1742. — Intervention.
- 1743. — Substitution.
- 1744. — Third-party practice.
- 1745. Process and appearance.
- 1746. — In general.
- 1747. — General appearance.
- 1748. — Nonresident patentee; appointment of agent.
- 1749. — Service on agent of competitor with regular and established place of business.
- 1750. Discovery.
- 1751. — In general.
- 1752. — Discretion of court.
- 1753. — Proceedings to obtain.
- 1754. — Protective orders.
- 1755. — Scope.
 - (1). In general.
 - (2). Initial disclosures.
 - (3). Expert witnesses and testimony.
 - (4). Pretrial disclosures.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- (5). Infringement or invalidity contentions.
- (6). Damages.
- 1756. — Failure to respond; sanctions in general.
- 1757. — Supplementation of responses.
- 1758. — Depositions.
 - (1). In general.
 - (2). Persons whose depositions may be taken.
 - (3). Scope of examination.
 - (4). Objections.
 - (5). Admissibility at trial.
 - (6). Failure to appear or testify; sanctions.
- 1759. — Interrogatories.
 - (1). In general.
 - (2). Scope.
 - (3). Opinions, conclusions, and interpretation of patents; contention interrogatories.
 - (4). Failure to answer; sanctions.
- 1760. — Production of documents and things.
 - (1). In general.
 - (2). Particular documents or things.
 - (3). Patent prosecution bar.
 - (4). Work product privilege or immunity.
 - (5). Failure to respond; sanctions.
- 1761. — Entry onto competitor's property.
- 1762. — Requests for admissions.
- 1763. Pretrial conferences and orders.

2. PLEADINGS AND MOTIONS.

- 1771. In general.
- 1772. Complaint or other initial pleading.
- 1773. — In general.
- 1774. — Title and right of complainant.
- 1775. — Marking and notice.
- 1776. — Negating laches.
- 1777. — Negating abandonment.
- 1778. — Description of invention and patentability.
- 1779. — Priority date.
- 1780. — Infringement and injury, loss, or damage.
 - (1). In general.

VII. PATENT INFRINGEMENT.(Cont'd)

- (2). Contributory or induced infringement.
- (3). Preliminary infringement contentions.
- 1781. — Denial of anticipation and public use or sale.
- 1782. — Estoppel to deny validity.
- 1783. Answer or other responsive pleading.
- 1784. — In general.
- 1785. — Affirmative defenses.
- 1786. — Fraud or inequitable conduct.
- 1787. — Notice of special matter.
- 1788. — Admissions.
- 1789. Counterclaims.
- 1790. — In general.
- 1791. — Compulsory or permissive.
- 1792. Cross-claims.
- 1793. Amended and supplemental pleadings.
- 1794. Verification of pleadings.
- 1795. Variance between pleadings and proof.
- 1796. Motion to strike pleadings.
- 1797. Motion for more definite statement.
- 1798. Motion for judgment on the pleadings.
- 1799. Motion to dismiss.
- 1800. — In general.
- 1801. — Voluntary dismissal.
- 1802. — Dismissal for failure to prosecute.
- 1803. — Proceedings in general.
- 1804. — Fact questions.

3. EVIDENCE.

- 1811. In general.
- 1812. Presumptions and burden of proof.
- 1813. — In general.
- 1814. — Patentability and validity.
- 1815. — Ownership of patent.
- 1816. — Marking and notice.
- 1817. — License.
- 1818. — Participation, intent, and contributory infringement.
- 1819. — Laches and estoppel.
- 1820. — Profits and damages.
- 1821. Admissibility.
- 1822. — In general.
- 1823. — Profits and damages.
- 1824. Degree of proof.
- 1825. Weight and sufficiency.
- 1826. — In general.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- 1827. — Direct or circumstantial evidence.
- 1828. — Particular matters.
 - (1). In general.
 - (2). Particular fields of invention.
- 1829. — Ownership of patent.
- 1830. — Marking and notice.
- 1831. — License.
- 1832. — Participation, intent, and contributory infringement.
- 1833. — Laches and estoppel.
- 1834. — Profits and damages.

4. TRIAL, HEARING, AND DETERMINATION.

- 1841. In general.
- 1842. Stay of proceeding.
- 1843. Scope of inquiry and power of court in general.
- 1844. Bifurcation or consolidation.
- 1845. Severance of claims.
- 1846. Reception of evidence.
- 1847. Reference.
- 1848. Questions of law or fact.
- 1849. Instructions.
- 1850. Closing arguments.
- 1851. Verdicts; special interrogatories.
- 1852. Findings and decree.
- 1853. Rehearing or reconsideration.

5. RELIEF.

- 1861. In general.
- 1862. Injunctions.
- 1863. — In general.
- 1864. — Grounds in general; multiple factors.
- 1865. — Availability and adequacy of other remedies.
- 1866. — Balance of hardships; irreparable injury.
- 1867. — Public interest considerations.
- 1868. — Defenses or objections.
- 1869. — Evidence.
- 1870. — Hearing and determination.
- 1871. — Scope and extent of relief.
- 1872. — Injunction against patentee.
- 1873. — Modification.
- 1874. Preliminary or temporary injunctions.
- 1875. — In general.
- 1876. — Discretion of court.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1877. — Grounds in general; multiple factors.
- 1878. — Establishment of validity and enforceability of patent.
- 1879. — Public acquiescence.
- 1880. — Previous adjudication of validity.
 - (1). In general; necessity.
 - (2). Effect of previous adjudication.
 - (3). — In general.
 - (4). — Previous adjudication in Court of Appeals or Supreme Court.
 - (5). — Previous adjudication in Patent and Trademark Office.
 - (6). — Previous adjudication in action against other defendants.
 - (7). New evidence or defense establishing invalidity.
 - (8). Previous adjudication entered by consent or without contest.
- 1881. — Establishment of infringement.
- 1882. — Actual or threatened infringement.
- 1883. — Availability and adequacy of other remedies.
- 1884. — Balance of hardships; irreparable injury.
- 1885. — Public interest considerations.
- 1886. — Defenses or objections.
 - (1). In general.
 - (2). Laches or acquiescence by patentee.
 - (3). Expiration of patent.
 - (4). Discontinuance of infringement.
- 1887. — Persons who may be restrained.
- 1888. — Application and proceedings.
 - (1). In general.
 - (2). Evidence in general.
 - (3). Presumptions and burden of proof.
 - (4). Weight and sufficiency of evidence.
 - (5). Hearing and determination.
- 1889. — Scope and extent of injunction.
- 1890. — Security instead of injunction.
- 1891. — Security on granting injunction; bonds.
- 1892. — Continuing, modifying, vacating, or dissolving.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- 1893. — Wrongful injunction.
- 1894. Enforcement of injunction.
- 1895. — In general.
- 1896. — Acts constituting violation.
- 1897. — Advice of counsel.
- 1898. — Proceedings in general.
- 1899. — Contempt proceedings.
- 1900. Profits.
- 1901. — In general.
- 1902. — Profits in addition to damages.
- 1903. — Elements, measure, and amount in general.
- 1904. — Reasonable royalty; hypothetical negotiation.
- 1905. — Entire market value.
- 1906. — Commercial value attributable to infringement.
- 1907. — Expenses and other charges against the proceeds.
- 1908. — Improvements.
- 1909. — Process patents.
- 1910. Damages.
- 1911. — In general.
- 1912. — Elements, measure, and amount.
- 1913. — Time limitation.
- 1914. — Reasonable royalty; hypothetical negotiation.
- 1915. — Notice or marking as prerequisite.
- 1916. — Nominal damages.
- 1917. — Provisional rights period.
- 1918. — Enhanced or punitive damages.
- 1919. — Supplemental damages.
- 1920. Interest.
Prejudgment interest, see INTEREST.
- 1921. — In general.
- 1922. — Interest on profits.
- 1923. — Interest on damages.
- 1924. Interlocutory decree.
- 1925. Reference of accounting under decree.

6. JUDGMENT.

- 1931. In general.
- 1932. Summary judgment.
- 1933. — In general.
- 1934. — Presence or absence of fact issues.
- 1935. — Particular cases.

VII. PATENT INFRINGEMENT.(Cont'd)

- (1). In general; products and devices.
- (2). Methods or processes.
- (3). Compositions.
- (4). Patentability and validity.
- (5). — In general.
- (6). — Novelty; anticipation.
- (7). — Public use or sale.
- (8). — Obviousness; lack of invention.
- 1936. — Affidavits or other evidence.
- 1937. — Hearing and determination.
- 1938. Default judgment.
- 1939. Relief from judgment.
- 1940. — In general.
- 1941. — Judgment as a matter of law.
- 1942. — New trial; amendment.
- 1943. — Setting aside judgment.
- 1944. — Default judgment.

7. APPELLATE REVIEW.

- 1951. In general.
- 1952. Decisions reviewable.
- 1953. — In general.
- 1954. — Mootness.
 - (1). In general.
 - (2). Expiration of patent pending appeal.
- 1955. — Finality.
 - (1). In general.
 - (2). Interlocutory review in general.
 - (3). Collateral and supplementary proceedings and questions.
 - (4). Judgment final except for accounting.
 - (5). Orders relating to injunctions.
- 1956. Presentation and reservation in lower court of grounds of review.
- 1957. — In general.
- 1958. — Plain error.
- 1959. Persons entitled to seek review or assert arguments; parties; standing.
- 1960. Supersedeas or stay of proceedings.
- 1961. — In general.
- 1962. — Bond or security.
- 1963. Record; supplementation and additional proofs.
- 1964. Briefs.
- 1965. Scope, standard, and extent of review.

291. PATENTS**VII. PATENT INFRINGEMENT.(Cont'd)**

- 1966. — In general.
- 1967. — De novo review in general.
- 1968. — Discretion of lower court in general.
- 1969. — Questions of fact, verdicts, and findings in general.
- 1970. — Particular matters.
 - (1). In general.
 - (2). Patentability and validity.
 - (3). — In general.
 - (4). — Eligible subject matter.
 - (5). — Novelty; anticipation.
 - (6). — Utility.
 - (7). — Obviousness; lack of invention.
 - (8). Persons entitled to patents; inventorship and priority.
 - (9). Patent applications and proceedings.
 - (10). — In general.
 - (11). — Specification and description; enablement.
 - (12). Construction and operation of patents.
 - (13). — In general.
 - (14). — Prosecution history estoppel.
 - (15). Infringement or noninfringement.
 - (16). Inequitable conduct.
 - (17). Relief.
 - (18). — In general.
 - (19). — Profits and damages.
 - (20). Costs and fees.
- 1971. — Presumptions.
- 1972. — Harmless and reversible error.
- 1973. — Subsequent appeals.
- 1974. Determination and disposition of cause.
- 1975. — In general.
- 1976. — Remand; mandate.

8. COSTS AND FEES.

- 1981. In general.
- 1982. Results of litigation; prevailing parties.
- 1983. — In general.
- 1984. — Effect of amount of recovery.
- 1985. — Effect of invalid claims and failure to file disclaimer.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1986. — Effect of tender or offer of judgment.
- 1987. — Effect of dismissal.
- 1988. Amount, rate, and items.
- 1989. — In general.
- 1990. — Depositions and discovery.
- 1991. — Reference and accounting.
- 1992. — Charts, drawings, models, and copies.
- 1993. — Record; transcripts.
- 1994. — Other particular items.
- 1995. Witness fees.
- 1996. Attorney fees.
- 1997. — In general.
- 1998. — Exceptional cases in general.
- 1999. — Awards to patentees.
- 2000. — Awards to competitors.
- 2001. — Amount, rate, and items.
- 2002. Persons entitled.
- 2003. Persons liable.
- 2004. Apportionment.
- 2005. Proceedings to impose; taxation.
- 2006. — In general.
- 2007. — Evidence.
- 2008. Costs and fees on appeal.
- 2009. Payment and remedies for collection.

9. OPERATION AND EFFECT OF DECISION.

- 2011. In general.
- 2012. Nature of decision.
- 2013. — In general.
- 2014. — Finality of determination.
- 2015. — Judgment by confession or on consent or offer.
- 2016. — Judgment on discontinuance, dismissal, or nonsuit.
- 2017. Nature of other proceeding.
- 2018. Matters concluded.
- 2019. — In general.
- 2020. — Identity of cause of action or theory of recovery.
- 2021. — Identity of subject matter.
- 2022. — Identity of defenses.
- 2023. Persons concluded.
- 2024. Persons who may take advantage of bar.
- 2025. Rule of comity.
- 2026. — In general.

291. PATENTS**VII. PATENT INFRINGEMENT.**(Cont'd)

- 2027. — Effect of trial court adjudications.
- 2028. — Effect of adjudications of Court of Appeals or Supreme Court.
- 2029. — Effect of adjudications of courts of foreign countries.
- 2030. — Conflicting previous adjudications.

VIII. DESIGN PATENTS.

- 2041. In general.
- 2042. Patentability and validity.
- 2043. — In general.
- 2044. — Eligible subject matter.
- 2045. — Novelty; anticipation.
- 2046. — Utility.
- 2047. — Obviousness; lack of invention.
- 2048. — Other challenges to validity.
- 2049. Persons entitled; inventorship and priority.
- 2050. Applications and proceedings.
- 2051. — In general.
- 2052. — Specification and claims.
- 2053. Construction and operation.
- 2054. Rights and duties; contracts, assignments, and licenses.
- 2055. Infringement.
- 2056. — In general.
- 2057. — Actions and remedies.

IX. PLANT PATENTS.**(A) IN GENERAL.**

- 2061. In general.
- 2062. Patentability and validity.
- 2063. — In general.
- 2064. — Eligible subject matter.
- 2065. — Novelty; anticipation.
- 2066. — Utility.
- 2067. — Obviousness; lack of invention.
- 2068. — Other challenges to validity.
- 2069. Persons entitled; inventorship and priority.
- 2070. Applications and proceedings.
- 2071. — In general.
- 2072. — Specification and claims.
- 2073. Construction and operation.
- 2074. Rights and duties; contracts, assignments, and licenses.
- 2075. Infringement.

IX. PLANT PATENTS.(Cont'd)

- 2076. — In general.
- 2077. — Actions and remedies.

(B) PLANT VARIETY PROTECTION.

- 2081. In general.
- 2082. Infringement.
- 2083. — In general.
- 2084. — Actions and remedies.

X. PATENTS ENUMERATED.

- 2091. In general; utility.
- 2092. Design.
- 2093. Plant.
- 2094. Reissue.

294. PAYMENT**SUBJECTS INCLUDED**

- Delivery and acceptance of money or its equivalent in discharge of pecuniary obligations in general
- Nature, requisites, sufficiency, and effect of such payment as satisfaction
- Acknowledgment of payment by receipt or other writing
- Presumption of payment and evidence relating thereto
- Application of payments as between particular debts
- Right to recover money paid
- Pleading payment and proof thereof as a defense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Accord and satisfaction, payment by way of, see **ACCORD AND SATISFACTION**
- Compromise, payment in performance of, see **COMPROMISE, SETTLEMENT, AND RELEASE**
- Decedents' debts, legacies, etc., payment of, see **EXECUTORS AND ADMINISTRATORS**

294. PAYMENT

Limitations statute, payment to prevent bar by, see LIMITATION OF ACTIONS

Particular classes of obligations, payment of, see LABOR AND EMPLOYMENT, COMMERCIAL PAPER, BONDS, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Statute of frauds, effect of payment as a compliance with, see FRAUDS, STATUTE OF

Taxes, payment of, see TAXATION

Tender and payment into court, see TENDER

I. REQUISITES AND SUFFICIENCY,
 Ⓔ1-35.

II. APPLICATION, Ⓔ36-47.

III. OPERATION AND EFFECT, Ⓔ48-53.

IV. PROCEEDINGS TO ESTABLISH PAYMENT, Ⓔ55-79.

V. RECOVERY OF PAYMENTS, Ⓔ80-89.

I. REQUISITES AND SUFFICIENCY.

1. Nature and requisites in general.
 - (1). In general.
 - (2). Payment distinguished from other transactions.
2. What law governs.
3. Constitutional and statutory provisions.
4. Persons by whom payment may be made.
5. Persons to whom payment may be made.
6. Place for payment.
7. Time for payment.
8. Mode of making payment.
 - (1). In general.
 - (2). Deposit in bank or with third person.
9. Medium of payment in general.
10. Legal tender.
11. Money not legal tender.
12. Particular kinds of money or currency.
 - (.5). In general.
 - (1). Silver and gold.
 - (2). Fractional currency.
 - (3). Bank paper.
 - (4). Confederate money or securities.
 - (5). Foreign money.
13. Obligations payable in depreciated currency.
14. Operation and effect of scaling laws.

I. REQUISITES AND SUFFICIENCY.(Cont'd)

15. Payment by bills or notes.
16. — In general.
 - (1). In general.
 - (2). Surrender of creditor's note.
 - (3). Notes of agents or partners.
17. — Bill, acceptance, or note of debtor.
18. — Bill, acceptance, or note of third person.
19. Orders on third persons for money or goods.
20. Payment by checks.
21. — In general.
22. — Of debtor.
23. — Of third person.
24. Payment by giving other form of obligation or security.
25. Payment by entry of debits or credits, or by application of deposits or funds.
26. Payment by application of collateral security.
27. Payment by application of money or property wrongfully obtained.
28. Payment in services.
29. Payment by assignment of claims against another.
30. Payment in goods or specific articles.
31. Payment by transfer of real estate.
32. Part payment on account.
33. Conditional payment.
34. Acceptance.
35. Receipt or other acknowledgment.

II. APPLICATION.

36. Rights of parties in general.
37. Statutory provisions.
38. Appropriation by debtor.
 - (.5). In general.
 - (1). Right of debtor in general.
 - (2). What constitutes, and sufficiency of appropriation.
 - (3). Time for appropriation.
 - (4). Effect of appropriation.
39. Appropriation by creditor.
 - (1). In general.
 - (2). Manner of appropriation in general.
 - (3). Illegal and unenforceable demands.

294. PAYMENT**II. APPLICATION.(Cont'd)**

- (4). Joint debts and debts of other parties.
- (5). Priority of accrual or maturity of debt.
- (6). Secured and unsecured debts.
- (7). What constitutes, and sufficiency of appropriation.
- (8). Time for appropriation.
- (9). Effect of application.
- 40. Application in absence of appropriation by parties.
- 41. — In general.
 - (1). In general.
 - (2). Manner of application in general.
 - (3). Discharge of liens and mortgages.
 - (4). Illegal or unenforceable demands.
- 42. — Principal and interest.
- 43. — Items of current account.
- 44. — Priority of creation or accrual of debts.
- 45. — Priority of maturity of debts.
- 46. — Secured and unsecured debts.
 - (1). In general.
 - (2). In items of account.
- 47. Rights of third persons.
 - (1). In general.
 - (2). Rights of subsequent mortgagees or lienors.
 - (3). Rights of wife of debtor.

III. OPERATION AND EFFECT.

- 48. Admission of liability.
- 49. Merger of previous transactions.
- 50. Discharge of debt in general.
- 51. Payment by one or more codebtors.
- 52. Payment by third person.
- 53. Rescission of payment and return of medium received.

IV. PROCEEDINGS TO ESTABLISH PAYMENT.

- 55. Nature of defense in general.
- 56. Statutory provisions.
- 57. Pleading in anticipation of defense.
- 58. Demurrer raising defense.
- 59. Necessity of plea of payment.
- 60. Requisites and sufficiency of plea or answer.
 - (1). In general.

IV. PROCEEDINGS TO ESTABLISH PAYMENT.(Cont'd)

- (2). Denials.
- (3). Motion to strike.
- (4). Affidavit of defense.
- 61. Demurrer or reply to plea or answer.
- 62. Construction and operation of pleadings.
- 63. Issues, proof, and variance.
 - (5). In general.
 - (1). Issues and evidence admissible under pleadings in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under general issue or general denial.
 - (4). Variance.
- 64. Presumptions.
- 65. — In general.
 - 65.1. — As to medium of payment.
 - 65.2. — From possession of evidence of debt.
 - 65.3. — Receipt or other acknowledgment.
 - 65.4. — From remittance by mail.
 - 65.10. Burden of proof.
 - 65.11. — In general.
 - 65.12. — As to application of collateral.
 - 65.13. — Contradiction of receipt.
- 66. — Lapse of time.
 - (1). In general.
 - (2). What is sufficient time to raise presumption.
 - (3). Lapse of time in connection with other circumstances.
 - (4). Computation of period.
 - (5). Conclusiveness of presumption and rebuttal thereof.
- 67. — Payment by bills, notes, or checks.
 - (1). In general.
 - (2). Bills, notes, or checks of debtor.
 - (3). Bills, notes, or checks of third person.
 - (4). Conclusiveness of presumption and rebuttal thereof.
- 68. — Application of payments.
- 69. Admissibility of evidence.
- 70. — In general.
 - (1). In general.
 - (2). Relevancy.
 - (3). Financial condition.
 - (4). Habits or usage.

294. PAYMENT**IV. PROCEEDINGS TO ESTABLISH
PAYMENT.(Cont'd)**

- (5). Receipts or other acknowledgment.
- (6). Bills, notes, or checks.
- (7). Evidence explaining reception of note.
- (8). Medium of payment.
- (9). Transfer of property.
- 71. — Application of payments.
- 72. Weight and sufficiency of evidence.
- 73. — In general.
 - (1). In general.
 - (2). Testimony of parties to transaction.
 - (3). Documentary evidence in general.
 - (4). Payment by bills, notes, or checks.
 - (5). Possession of evidence of debt.
 - (6). Lapse of time in connection with other circumstances.
 - (7). Remittance by mail.
- 74. — Receipts.
 - (1). In general.
 - (2). Receipt in full.
 - (3). For bill or note.
 - (4). Genuineness of receipt.
- 75. — Application of payments.
- 76. Questions for jury.
 - (1). In general.
 - (2). Presumption of payment.
 - (3). Medium of payment.
 - (4). Payment by bills, notes, checks, or orders.
 - (5). Weight and sufficiency of evidence.
 - (6). Application of payments.
- 77. Instructions.
- 78. Verdict and findings.
- 79. Review.

V. RECOVERY OF PAYMENTS.

See also IMPLIED AND CONSTRUCTIVE CONTRACTS §§10–25. *As distinguished from the topic IMPLIED AND CONSTRUCTIVE CONTRACTS, this subdivision includes recovery of payments on executed contracts where no obligation to pay existed, but by fraud, mistake, duress, or other cause, payment has been made; the topic IMPLIED AND CONSTRUCTIVE CONTRACTS is confined to recovery of payments made on executory contracts, as on failure of payee to perform, or other ground of recovery.*

- 80. Nature and grounds of right.
- 81. Statutory provisions.

V. RECOVERY OF PAYMENTS.(Cont'd)

- 82. Voluntary payments in general.
 - (1). In general.
 - (2). What constitutes voluntary payment.
 - (3). Character of payment in general.
 - (4). Payment on contract.
 - (5). Payment of interest.
 - (6). Payment by way of compromise.
 - (7). Payment of judgment or decree.
 - (8). Payment on execution.
 - (9). Agreement to repay.
- 83. Claim or color of right.
- 84. Mistake of law.
 - (1). In general.
 - (2). What constitutes, and character of payment.
 - (3). Payments under unconstitutional or invalid statutes or ordinances.
 - (4). Payment on contract.
 - (5). Payment of incumbrances.
- 85. Mistake of fact.
 - (1). In general.
 - (2). What constitutes, and character of payment.
 - (3). Payment on contract.
 - (4). Payment of interest.
 - (5). Payment on account.
 - (6). Payment of incumbrance.
 - (7). Diligence and waiver.
 - (8). Restoration of payee to former status.
- 86. Fraud.
- 87. Duress.
 - (1). In general.
 - (2). What constitutes duress, and character of payment in general.
 - (3). Apprehension or threat of legal proceedings.
 - (4). Duress of person.
 - (5). Duress of goods.
- 88. Protest.
- 89. Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Parties.
 - (4). Pleading.

294. PAYMENT**V. RECOVERY OF PAYMENTS.**(Cont'd)

- (5). Evidence.
- (6). Trial.

295. PENALTIES**SUBJECTS INCLUDED**

Moneys recoverable under statutes imposing payment thereof as a punishment for violations of their provisions

Nature and scope of such punishment in general

Constitutional and statutory provisions relating thereto

In what cases and for what offenses penalties are imposed in general

Jurisdiction over and proceedings for recovery of penalties by actions, penal or qui tam, or by indictment or information

Verdicts and judgments and enforcement thereof

Rights of informers and of plaintiffs in qui tam actions

Waiver, compounding, or remission of penalties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Breaches of contracts in general, penalties for, and distinction between penalties and liquidated damages, see DAMAGES

Fines imposed as punishment by sentences of courts, see FINES

Particular offenses, penalties for, see ALCOHOLIC BEVERAGES, FOOD, and other specific topics

Penal bonds, see BONDS

Penal statutes in general, construction of, see CRIMINAL LAW  12.7, STATUTES  1316

I. NATURE AND GROUNDS, AND EXTENT OF LIABILITY,  1–15.

II. ACTIONS AND OTHER PROCEEDINGS,  16–41.

I. NATURE AND GROUNDS, AND EXTENT OF LIABILITY.

1. Nature and scope as punishment.
2. Constitutional and statutory provisions.
3. Imposition and grounds in general.
4. Amount and extent.
5. Defenses.
6. Persons entitled to enforce.
7. — In general.
8. — Persons injured or aggrieved.
9. — Informers.
10. Persons liable.
11. Remission.
12. Payment.
13. Disposition of proceeds.
14. — In general.
15. — Rights of informers.

II. ACTIONS AND OTHER PROCEEDINGS.

16. Nature and form of remedy.
17. Statutory provisions.
18. Summary remedies.
19. Conditions precedent.
20. Jurisdiction.
21. Time to sue.
See also LIMITATION OF ACTIONS.
22. Parties plaintiff.
23. — In general.
24. — Qui tam actions and informers.
25. — Control of proceedings.
26. Parties defendant.
27. Process.
28. — In general.
29. — Indorsements and references to statutes.
30. — Service.
31. Abatement on death of party.
32. Pleading.
33. Evidence.
34. Dismissal before trial.
35. Questions for jury.
36. Verdict and findings.
37. New trial.
38. Judgment.
39. Execution and enforcement of judgment.
40. Appeal and error.
41. Costs.

297. PERJURY**296. PENSIONS****SUBJECTS INCLUDED**

Pecuniary allowances paid periodically by government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representatives

Who are entitled to such allowances and rate and amount thereof

Proceedings to obtain and payment of such pensions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bounties offered to induce performance of services to the public, see BOUNTIES

Employee pension and benefit plans, see LABOR AND EMPLOYMENT VII

Exemption of pensions from—

Attachment and execution, see EXEMPTIONS

Taxation, see TAXATION

Federal old age and survivors benefits, see SOCIAL SECURITY

Retirement benefits for officers or public employees, see ARMED SERVICES, COUNTIES, EDUCATION, JUDGES, MUNICIPAL CORPORATIONS, PUBLIC EMPLOYMENT, STATES, UNITED STATES, and other topics relating to officers and public employees

1. Constitutional and statutory provisions.
2. Nature of pensions and persons entitled.
3. Rate or amount and arrears.
4. Pension office and proceedings therein in general.
5. Pension agencies and agents.
6. Attorneys or agents, and fees for obtaining pensions.
7. Applications and proceedings thereon.
8. Allowance and certificate.
9. Pledge or other transfer.
10. Payment, checks, and vouchers.
11. Investigations of suspected attempts to defraud.
12. Striking names from rolls, and restoration.
13. Offenses relating to obtaining or payment of pensions or fees therefor.

297. PERJURY**SUBJECTS INCLUDED**

Willful violation of the obligation imposed by an oath or affirmation or other lawful substitute for an oath, by giving false testimony or making false declarations or statements in a judicial proceeding or other proceeding authorized by law

Suborning or procuring or attempting to induce another to commit such acts

Nature and elements of the crimes of perjury, false swearing, subornation of perjury, bribery of witnesses, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Prosecution for obstruction of justice for giving false testimony, see OBSTRUCTING JUSTICE

Suppression of evidence and intimidation of witnesses, see OBSTRUCTING JUSTICE

I. OFFENSES AND RESPONSIBILITY THEREFOR, ¶1–16.

II. PROSECUTION, ¶17–40.

III. SENTENCE AND PUNISHMENT, ¶41.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

1. Nature and elements of offenses in general.
2. Statutory provisions.
3. Intent.
4. Proceeding in which oath was administered.
5. — In general.
6. — Judicial proceedings.
7. — Administrative proceedings.
8. — Official and other promissory oaths.
9. Jurisdiction or authority of court or tribunal or officer administering oath.
 - (.5). In general.
 - (1). Jurisdiction of court.
 - (2). Officers or persons authorized to administer oaths.

297. PERJURY**I. OFFENSES AND RESPONSIBILITY THEREFOR.(Cont'd)**

10. Administration, form, and making of oath or substitute therefor.
11. Materiality of testimony or assertion.
 - (.5). In general.
 - (1). Necessity that testimony be material.
 - (2). Materiality in general.
 - (3). Materiality of affidavits and statements therein.
 - (4). Oaths in ministerial proceedings.
 - (5). Oath as to account or claim sued on.
 - (6). Justification of sureties.
 - (7). Testimony before grand jury.
 - (8). Degree of materiality and sufficiency to establish issues.
 - (9). Matters affecting character or credit of witness.
 - (10). Incompetency of witness or testimony and waiver thereof.
 - (11). Testimony as to statements made elsewhere.
12. Falsity of testimony or assertion, and knowledge thereof.
13. Subornation of perjury.
14. Attempts.
15. Defenses.
16. Persons liable.

II. PROSECUTION.

17. Termination of proceeding in which oath was administered.
18. Indictment or information.
- 18.1. — In general.
19. — Requisites and sufficiency in general.
 - (.5). In general.
 - (1). Form and requisites in general.
 - (2). Sufficiency in general.
 - (3). Joinder of assignments.
20. — Intent.
21. — Description of proceeding in which oath was administered.
22. — Jurisdiction and authority to administer oath.
23. — Administration, form, and making of oath or substitute therefor.

II. PROSECUTION.(Cont'd)

24. — Setting forth testimony or affidavit or other writing.
25. — Materiality of testimony or assertion.
 - (.5). In general.
 - (1). Mode of pleading materiality in general.
 - (2). Necessity of averments of materiality in general.
 - (3). Necessity of averring facts to show materiality.
 - (4). Necessity of averments of materiality when facts are alleged showing it.
 - (5). Sufficiency of averments of materiality in general.
 - (6). Sufficiency of statements of facts and issues to show materiality.
 - (7). Effect of averments relating to immaterial matters.
26. — Assignment of perjury.
 - (.5). In general.
 - (1). Necessity of averring falseness of oath.
 - (2). Necessity of stating particular facts or terms of testimony.
 - (3). Willfulness and knowledge of falsity.
 - (4). Sufficiency of denials in general.
27. — Subornation of perjury.
28. — Attempts.
29. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance between allegations and proof.
30. Evidence.
- 30.1. — In general.
31. — Presumptions and burden of proof.
32. — Admissibility.
 - (1). In general.
 - (2). Intent, knowledge, and motive.
 - (3). Description of proceeding in which oath was administered.
 - (4). Jurisdiction and authority to administer oath.

298. PERPETUITIES**II. PROSECUTION.(Cont'd)**

- (5). Administration, form, and making of oath.
- (6). Materiality of testimony on which perjury is alleged.
- (7). Evidence of what accused swore to.
- (8). Truth or falsity of oath or assertion.
- (9). Subornation of perjury and attempts to suborn.
- 33. — Weight and sufficiency in general.
 - (1). In general.
 - (2). Intent and knowledge of falsity.
 - (3). Proceedings in which oath was administered.
 - (4). Jurisdiction and authority to administer oath.
 - (5). Administration, form, and making of oath.
 - (6). Materiality of testimony or assertion.
 - (7). Evidence of what accused swore to.
 - (8). Falsity of oath or assertion.
 - (9). Subornation of perjury.
- 34. — Number of witnesses or corroboration.
 - (1). In general.
 - (2). Necessity of corroboration in general.
 - (3). Elements and evidence requiring corroboration.
 - (4). Sufficiency of corroboration in general.
 - (5). Corroboration by circumstances.
 - (6). Corroboration by admissions of accused.
- 35. Trial.
- 35.1. — In general.
- 36. — Questions for jury.
- 37. — Instructions.
 - (1). In general.
 - (2). Willfulness and knowledge of falsity of testimony.
 - (3). Degree of proof required and effect of evidence in general.
 - (4). Number and corroboration of witnesses.
- 38. — Verdict.

III. SENTENCE AND PUNISHMENT.

- 41. In general.

298. PERPETUITIES**SUBJECTS INCLUDED**

- Estates inalienable beyond the time allowed by law
- Restrictions, under either common-law rules or statutes, on creation of future contingent estates, or on suspension of the absolute power of alienation, or on trusts for accumulation
- Application of such restrictions to deeds, marriage settlements, trusts, devises and bequests, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Operation of limitations void for remoteness upon prior or subsequent limitations, see **REAL PROPERTY CONVEYANCES, WILLS**, and other specific topics
- 1. Nature of rule against remoteness of limitations.
- 2. What law governs.
- 3. Constitutional and statutory provisions.
- 4. Creation of future estates in general.
 - (1). In general.
 - (2). Possibility of violation of rule and effect of defeasibility or limitation.
 - (3). Vesting of estate at death of testator or within permissible period.
 - (4). Reversionary interests and conditions attached to gift or grant.
 - (5). Remainders in general.
 - (6). Limitation after life estate in general.
 - (7). Limitation after life estate to several persons.
 - (8). Remainder with double aspect and cross-remainders.
 - (9). Limitation after successive life estates.

298. PERPETUITIES

- (10). Limitation to unborn persons or to heirs or descendants.
- (11). Limitation on or after minority or definite period of time.
- (12). Postponement of enjoyment of estate or interest.
- (13). Executory devises.
- (14). Limitation on failure of issue.
- (15). Trust estates.
- (15.1). — In general.
- (16). — Duration for minority or definite period of time.
- (17). — Right of survivorship.
- (18). — Effect of power of sale.
- (19). Fidei-commissa and substitutions.
- (20). Powers.
- (21). Dispositions of rents, profits, and income.
- (22). Partial invalidity.
- 5. Suspension of absolute power of alienation.
- 6. — In general.
 - (1). In general.
 - (2). Duration of trusts in general.
 - (3). Gift or limitation to lives in being in general.
 - (4). Trusts to terminate at definite period or at death of beneficiary.
 - (5). Restraint on alienation for definite period of time.
 - (6). Limitation after life estate to several persons.
 - (7). Limitation to unborn persons.
 - (8). Right of survivorship among beneficiaries.
 - (9). Vesting of estate at death of testator or within permissible period.
 - (10). Possibility or probability of violation of rule, and ability of beneficiaries to alienate property.
 - (11). Sufficiency and effect of power of sale.
 - (12). Enjoyment of rents and profits before accrual of absolute interest.
 - (13). Effect of election of widow.
 - (14). Conditions attached to gift.
 - (15). Charge on estate granted.
 - (16). Powers.

- (17). Mortgages and leases.
- (18). Gift of annuities or rents, profits, or income.
- 7. — Personal property.
 - (1). In general.
 - (2). Trusts in personal property.
- 8. Remoteness of gifts to charities.
 - (.5). In general.
 - (1). Exception to rule against perpetuities in general.
 - (2). Gifts on condition.
 - (3). Limitations over to charities.
 - (4). Gifts to existing corporations or institutions.
 - (5). Effect of uncertainty or indefiniteness as to beneficiaries.
 - (6). Gifts to projected corporations or institutions.
 - (7). Charitable nature of gifts.
 - (8). Accumulations for charitable purposes.
- 9. Accumulations.
 - (1). In general.
 - (2). What constitutes directions for accumulations.
 - (3). Accumulations for definite period of time.
 - (4). Accumulations during minorities.
 - (5). Accumulations during life or lives.
 - (6). Purpose of accumulation.
 - (7). Effect of invalid provisions.

300. PILOTS**SUBJECTS INCLUDED**

- Licensing, registration, certification, and regulation of maritime pilots, for particular ports or places
- Employment of pilots by vessels, compulsorily or otherwise
- Mutual rights, duties, and liabilities of pilots and owners, charterers, and masters of vessels on which they are employed
- Liabilities to pilots of vessels, their cargo, and freight

302. PLEADING**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Aircraft, pilots of, see AVIATION

Power to regulate commerce, see COMMERCE

1. Power to control and regulate.
2. Who are pilots.
- 2.5. Pilots' associations.
3. Statutory provisions.
4. Pilot commissioners.
5. Licenses.
6. Enjoining unauthorized person from acting as pilot.
7. Obligation to take pilot.
8. Tender of services.
9. Compensation.
10. — In general.
11. — Amount.
12. — Actions.
13. — Lien.
14. Authority and functions.
15. Degree of skill and care required.
16. Liability for negligence.
17. Penalties for violations of regulations.
18. Offenses.

302. PLEADING**SUBJECTS INCLUDED**

Formal statements in writing of causes of actions and defenses in civil actions in general, whether proceeding according to the course of practice at common law or under provisions of practice acts, codes of procedure, etc.

Nature, requisites, and sufficiency of such statements by the respective parties, and allegations and denials therein

Affidavits of claim, of merits, and of defense

Exhibits annexed to pleadings, and copies of accounts mentioned and bills of particulars of matters alleged in pleadings

Filing and service of pleadings and of papers connected therewith

Motions and other proceedings relating to pleadings

Amended and supplemental pleadings

Joinder of issue, issues, admissibility of evidence under pleadings

What constitutes variance between allegations and proof, and effect of such variance

Waiver of objections, and effect of verdict and judgment to cure defects

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Abatement, grounds of and necessity of pleading in abatement, see ABATEMENT AND REVIVAL

Bankruptcy or insolvency proceedings, pleadings in, see BANKRUPTCY, CREDITORS' REMEDIES \S 1183

Civil proceedings other than actions, pleading in, see MANDAMUS, QUO WARRANTO, SCIRE FACIAS, and other specific topics

Criminal prosecutions, pleading in, see INDICTMENTS AND CHARGING INSTRUMENTS and topics relating to particular crimes

Dismissal for defects in pleadings, see PRETRIAL PROCEDURE

Estoppel, pleadings as ground of, see ESTOPPEL

Pretrial conference, see PRETRIAL PROCEDURE

Evidence, pleading as, see EVIDENCE

Federal rules, pleading under, see FEDERAL CIVIL PROCEDURE

Particular classes of persons, pleading by, see INFANTS, and other specific topics

Particular causes of action and defenses, pleadings alleging, see specific topics

Particular forms of action, pleading in, see specific topics

Parties, joinder and designation in pleading, and objections to pleadings for nonjoinder, misjoinder, misnomer, or other defects as to parties, see PARTIES

Suits in equity or admiralty, pleading in, see EQUITY, ADMIRALTY

Summary judgments and arrest of judgment for defects in pleadings, see JUDGMENT

Wills, pleading in proceedings to probate or contest, see WILLS

302. PLEADING

- I. FORM AND ALLEGATIONS IN GENERAL, ¶1–38.
- II. DECLARATION, COMPLAINT, PETITION, OR STATEMENT, ¶38.5–75.
- III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL, ¶76–161.
 - (A) DEFENSES IN GENERAL, ¶76–100.
 - (B) DILATORY PLEAS AND MATTER IN ABATEMENT, ¶101–111.49.
 - (C) TRAVERSES OR DENIALS AND ADMISSIONS, ¶112–129.
 - (D) MATTER IN AVOIDANCE, ¶130–137.
 - (E) SET-OFF, COUNTERCLAIM, AND CROSS-COMPLAINT, ¶138–150.
 - (F) AFFIDAVIT OF DEFENSE OR OF MERITS, ¶151–161.
- IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS, ¶162–186.
- V. DEMURRER OR EXCEPTION, ¶187–228.23.
- VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER, ¶229–286.
- VII. SIGNATURE, ¶287–288.
- VIII. VERIFICATION, ¶289–304.
- IX. PROFERT OR OYER, ¶305–306.
- X. EXHIBITS, ¶307–312.
- XI. BILL OF PARTICULARS, ¶313–329.
- XII. COPY OF ACCOUNT, ¶330.
- XIII. FILING AND SERVICE, ¶331–338.
- XIV. WITHDRAWAL, ¶339.
- XV. LOST OR DESTROYED PLEADINGS, ¶340.
- XVI. MOTIONS, ¶341–369.
- XVII. ISSUES, PROOF, AND VARIANCE, ¶370–399.
- XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS, ¶400–431.
- XIX. AIDER BY VERDICT OR JUDGMENT, ¶432–437.

I. FORM AND ALLEGATIONS IN GENERAL.

- 1. Nature and mode of pleading in general.
- 2. Statutory provisions.
- 3. Necessity for written pleadings.
- 4. Entitling pleadings.
- 5. Subject-matter of allegations in general.
- 6. Matters judicially noticed.
- 7. Matters of presumption or implication.
- 8. Matters of fact or conclusions.
 - (1). In general.

I. FORM AND ALLEGATIONS IN GENERAL.(Cont'd)

- (2). Nature and subject-matter of allegations in general.
- (3). Characterization of acts or conduct and stating result thereof in general.
- (4). Allegations as to consideration.
- (5). Allegations or denials of indebtedness.
- (6). Validity or legality of particular acts, claims, conduct, or instruments.
- (7). Construction and effect of contracts and performance or breach thereof.
- (8). Duties or obligations and performance thereof.
- (9). Allegations as to jurisdiction and legal proceedings.
- (10). Discharge, release, waiver, or abandonment.
- (11). Title, ownership, estate, or possession.
- (12). Rights, claims, or liens, and priority thereof.
- (13). Appointment, authority, and duties of officers and legal representatives.
- (14). Heirship.
- (15). Fraud or misrepresentation.
- (16). Mistake, duress, or undue influence.
- (17). Allegations of negligence.
- (18). Scope of employment.
- (19). Invitation to enter and status as passenger.
- (20). Damage or injury.
- (21). Knowledge or notice.
- (22). Payment or tender.
- 9. Conclusions of law from facts alleged.
- 10. Pleading according to legal effect.
- 11. Matters of evidence.
- 12. Matters peculiarly within knowledge of adverse party.
- 13. Matters not known to party pleading.
- 14. Matters of record.
- 15. Adoption of allegations in other pleadings.
- 16. Sufficiency of allegations in general.

302. PLEADING**I. FORM AND ALLEGATIONS
IN GENERAL.**(Cont'd)

17. Directness and positiveness, or argumentativeness.
18. Certainty, definiteness, and particularity.
19. Ambiguity.
20. Disjunctive and alternative allegations.
21. Consistency or repugnancy.
22. Irrelevancy and redundancy.
23. Impertinence and scandal.
24. Falsity.
25. Language and form of allegations.
26. — In general.
27. — Technical terms.
28. — Videlicet or scilicet.
29. — Abbreviations, numerals, and symbols.
30. — Mistakes in writing, grammar, or spelling.
31. — Erasures and interlineations.
32. Pleading written instruments.
- 32.5. Pleading statutes and statutory actions.
Pleading foreign statutes, see ACTION ¶17.
 - (1). In general.
 - (2). Following language of statute.
 - (3). Special, local, and private acts.
33. Allegations of particular facts and circumstances.
34. Construction in general.
 - (1). In general.
 - (2). General and specific allegations.
 - (3). Presumptions and inferences in aid of pleading.
 - (3.5). Pro se or lay pleadings.
 - (4). Construction against pleader.
 - (5). Particular phrases and allegations.
 - (6). Objections raised at trial or after verdict or judgment.
 - (7). Objections raised on appeal.
35. Surplusage and unnecessary matter.
36. Conclusiveness of allegations or admissions on party pleading.
 - (1). In general.
 - (2). Allegations or admissions in declaration, complaint, or petition.
 - (3). Allegations or admissions in plea, answer, or cross-complaint.
 - (4). Allegations or admissions of reply.
 - (5). Admissions by failure to deny.
 - (6). Persons bound.

**I. FORM AND ALLEGATIONS
IN GENERAL.**(Cont'd)

- (7). Pleadings abandoned or withdrawn, or to which demurrer has been sustained.
 37. Effect of omission to make allegations.
 38. Pleading bad in part.
- II. DECLARATION, COMPLAINT, PETITION,
OR STATEMENT.**
- 38.5. Nature and office.
 39. Statutory provisions.
 40. Time for filing or service.
 41. Form and requisites of declaration in general.
 42. Form and requisites of complaint, petition, or statement in general.
Excludes construction of pro se or lay pleadings, see ¶34(3.5) above.
 43. Title or caption.
 44. Designation of court and term.
 45. Venue or designation of place of trial.
 46. Names, description, and capacity of parties.
 47. Recital of or reference to process.
 48. Statement of cause of action in general.
 49. Theory and form of action.
 50. Separate causes of action.
 51. — In general.
 52. — Separate statement and numbering.
 - (1). In general.
 - (2). Particular causes of action.
 53. Separate counts on same cause of action.
 - (1). In general.
 - (2). Particular causes of action.
 54. Reference from one count or paragraph to another.
 55. Right of plaintiff.
 56. — In general.
 57. — Coplaintiffs.
 58. Matter of inducement.
 59. Performance of conditions.
 60. Act or omission of defendant.
 61. — In general.
 62. — Codefendants.
 64. Duplicity.
 - (1). In general.
 - (2). Particular causes or grounds of action.
 65. Excusing nonjoinder of parties.

302. PLEADING**II. DECLARATION, COMPLAINT, PETITION,
OR STATEMENT.(Cont'd)**

- 66. Excusing failure to make averments.
- 67. Anticipating defenses.
- 68. Allegations on knowledge, or on information and belief.
- 69. Admissions.
- 70. Formal conclusion.
- 71. Damages.
- 72. Prayer for relief.
- 73. Indorsements.
- 74. Conformity to process, and variance.
- 75. Affidavit of claim or cause of action.

**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.****(A) DEFENSES IN GENERAL.**

- 76. Nature and scope of defense.
- 77. Statutory provisions.
- 78. Necessity for defense.
- 79. Matter constituting defense in general.
- 80. Partial defenses.
- 81. Matters arising after commencement of suit and before plea or answer.
- 82. Right to defend, and leave of court.
- 83. Rule to plead.
- 84. Joint or separate pleas or answers of co-defendants.
- 85. Time to plead in general.
 - (1). In general.
 - (2). Discretion of court.
 - (3). After default or expiration of time.
 - (4). Extension or shortening of time.
 - (5). Computation of time.
- 86. Impar lance.
- 87. Mode of pleading defenses in general.
- 88. Plea or answer to part of cause of action or pleading of plaintiff.
- 89. Pleading different pleas or defenses together.
- 90. — In general.
- 92. — Joinder of set-off or counterclaim with other defense.
- 93. — Inconsistent defenses.
 - (1). In general.
 - (2). Particular defense in general.
 - (3). General issue or denial and other defenses.

**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.(Cont'd)**

- (4). Payment or limitations and other defenses.
- 94. — Separate statement of defenses.
- 95. — Reference from one plea or paragraph to another.
- 96. Statement of defense.
- 97. Formal commencement and conclusion of pleas.
- 98. Responsiveness of plea or answer.
- 99. Duplicity in plea or answer.
- 100. Tender of issue by plea or answer, and joinder in issue thereon.
- (B) DILATORY PLEAS AND MATTER
IN ABATEMENT.**
- 101. Nature and office of dilatory pleas.
- 102. Statutory provisions.
- 104. Plea to the jurisdiction.
 - (1). In general.
 - (2). Nonresidence of defendant and venue of action.
- 105. Plea in suspension.
- 106. Plea in abatement.
 - (1). In general.
 - (2). Plea of other action pending.
- 107. Answer pleading matter in abatement.
- 108. Pleading in abatement matter in bar.
- 109. Pleading in bar matter in abatement.
- 110. Operation and effect of plea or answer and waiver or abandonment thereof.
- 111. Decision of issue, and proceedings thereon.
 - 111.1. — In general; controverting plea or affidavit, necessity of.
 - 111.2. — Time for filing controverting plea or affidavit and extension thereof.
 - 111.3. — Requisites, sufficiency and effect of controverting plea or affidavit in general.
 - 111.4. — Making petition, complaint or declaration a part of controverting plea or affidavit.
 - 111.5. — Verification of controverting plea or affidavit.
 - 111.6. — Amendment of controverting plea or affidavit.
 - 111.7. — Service of controverting plea or affidavit.

302. PLEADING**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.(Cont'd)**

- 111.8. — Issues, nature and requisites of.
- 111.9. — Matters to be proved in general.
- 111.10. — Admissions.
- 111.11. — Surplusage and immaterial matters.
- 111.12. — Matters to be proved in specific suits in general.
- 111.13. — Breach of warranty of title to land, suits for.
- 111.14. — Carriers, suits against.
- 111.15. — Contract in writing, suit involving.
- 111.16. — Corporations and associations, suits against.
- 111.17. — Crime or trespass, suit based on.
- 111.18. — Defendants in different counties, suits against.
- 111.19. — Foreign corporations, suits against.
- 111.20. — Fraternal benefit societies and statewide mutual assessment companies, suits against.
- 111.21. — Fraud, suits involving.
- 111.22. — Insurance companies, suits against.
- 111.23. — Lands, suits for recovery of, or damages thereto, or to remove incumbrances, quiet title, prevent or stay waste.
- 111.24. — Libel or slander, suits for.
- 111.25. — Married women, suits against.
- 111.26. — Mortgage or other liens, suits for foreclosure of.
- 111.27. — Partition, suits for.
- 111.28. — Railroad corporations, suits against for personal injuries or death.
- 111.29. — Multiple or alternative grounds; suits involving in general.
- 111.30. — Necessary parties where two or more defendants.
- 111.31. — Variance in general.
- 111.32. — Failure of proof.
- 111.33. — Right to separate trial on pleas before trial on merits.
- 111.34. — Time for trial.
- 111.35. — Trial in general.

**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.(Cont'd)**

- 111.36. — Scope of inquiry and matters considered in general.
- 111.37. — Merits.
- 111.38. — Petition, complaint, declaration or other pleadings.
- 111.39. — Presumptions and burden of proof.
 - (.5). In general.
 - (1). Abatement in general.
 - (2). Venue and privilege in general.
 - (3). Cause of action.
 - (4). Exceptions in Texas venue statute.
 - (4.1). — In general.
 - (5). — Contract in writing.
 - (6). — Crime or trespass, negligence.
 - (7). — Defendants in different counties.
 - (8). — Fraud.
- 111.40. — Admissibility in evidence in general.
- 111.41. — Pleadings.
- 111.42. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Degree of proof in general; prima facie evidence or case.
 - (3). Residence of defendants.
 - (4). Exceptions in Texas venue statute.
 - (4.1). — In general.
 - (5). — Contract in writing.
 - (6). — Corporations and associations; foreign corporations.
 - (7). — Crime, trespass, or negligence in general.
 - (8). — Automobile accident cases, crime, trespass, or negligence.
 - (9). — Defendants in different counties.
 - (10). — Fraud.
 - (11). — Lands.
- 111.43. — Questions of law and fact.
- 111.44. — Verdict and findings.
- 111.45. — Time within which decision must be rendered.
- 111.46. — Determination.
- 111.47. — Order or judgment.

302. PLEADING**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.**(Cont'd)

- 111.48. — Amendments following sustain-
ing of pleas.
- 111.49. — Vacation or modification of or-
der or judgment.

(C) TRAVERSES OR DENIALS AND ADMISSIONS.

112. Nature and office of traverse or denial.
113. Statutory provisions.
114. Sufficiency of traverse in general.
115. General issue.
116. General issue with notice or leave as to
special matter.
117. Common or specific traverse.
118. Special traverse.
119. Sufficiency of denials under codes of
procedure.
- 119.1. — In general.
120. — Form and requisites in general.
- (1). In general.
- (2). Denial of allegations not specifi-
cally admitted or qualified.
121. — Denial of knowledge or informa-
tion.
- (1). In general.
- (2). Particular matters.
- (3). Matters necessarily or presump-
tively within knowledge of de-
fendant.
- (4). Matters of record.
122. — Denial on information and belief.
123. General issue or general denial under
codes of procedure.
124. Specific denials under codes of proce-
dure.
125. Traverse or denial of conclusions or im-
material allegations.
126. Negative pregnant.
127. Admissions in general.
- (1). In general.
- (2). Construction, operation, and ef-
fect in general.
128. Protestation.
129. Admissions by failure to traverse or
deny.
- (1). In general.
- (2). Subject-matter of allegations not
denied in general.

**III. RESPONSES OR RESPONSIVE
PLEADINGS IN GENERAL.**(Cont'd)

- (3). Immaterial or unnecessary allega-
tions.
- (4). Matters of fact or conclusions.
- (5). Pleading written instruments.

(D) MATTER IN AVOIDANCE.

130. Nature and office of pleading in confes-
sion and avoidance.
131. Form and requisites of plea in general.
132. Statement of new matter constituting de-
fense under codes of procedure.
133. Giving color.
134. Matter in justification or excuse.
135. Matter in discharge.
136. Matter available under general issue or
general denial.
137. Matter available under other special
plea.

**(E) SET-OFF, COUNTERCLAIM,
AND CROSS-COMPLAINT.**

138. Nature and office of pleading.
139. Necessity for plea or answer.
140. Time for pleading.
141. Notice.
142. Form and requisites of plea or answer in
general.
143. Matter of recoupment or reconvention.
144. Matter of set-off in general.
145. Set-off or counterclaim in affidavit of
defense.
146. Counterclaim in answer.
147. Cross-complaint in general.
148. Cross-complaint against plaintiff.
149. Cross-complaint against codefendant or
third parties.
150. Answer to cross-complaint.

(F) AFFIDAVIT OF DEFENSE OR OF MERITS.

151. Nature and office.
152. Necessity in general.
153. Persons who may make.
154. Time for making and filing.
155. Form and requisites in general.
156. Averments as to facts constituting de-
fense.
157. Averments of facts or conclusions.
158. Averments as to merits.

302. PLEADING**III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.**(Cont'd)

- 159. Averments as to advice of counsel.
- 160. Construction, operation, and effect.
- 161. Failure to make or file.

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.

- 162. Nature and office of replication or reply.
- 163. Statutory provisions.
- 164. Necessity for pleading in reply.
- 165. — In general.
- 166. — New matter in answer.
- 167. — Set-off or counterclaim in answer.
- 168. — Cross-complaint.
- 169. Matter to be pleaded in reply in general.
- 170. Matters arising after commencement of suit and before replication or reply.
- 171. Right to plead in reply and leave of court.
- 172. Time for filing or service.
- 173. Form and requisites of replication in general.
- 174. Form and requisites of reply under codes of procedure.
- 175. New assignment of cause of action.
- 176. Traverses or denials.
- 177. Admissions.
- 178. Confession and avoidance.
- 179. Replication de injuria.
- 180. Departure from declaration or complaint.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
 - (4). Actions to quiet title.
 - (5). Injunction or mandamus.
- 181. Unnecessary reply.
- 182. Failure to reply.
- 183. Rejoinder.
- 184. Surrejoinder.
- 185. Rebutter.
- 186. Tender of issue, and joinder in issue.

V. DEMURRER OR EXCEPTION.

- 187. Mode of objecting; preliminary objections.
- 188. Plea, answer, or reply, with demurrer.
- 189. Nature and office of demurrer, and pleadings demurrable.

V. DEMURRER OR EXCEPTION.(Cont'd)

- 190. Statutory provisions.
- 191. Necessity for demurrer.
- 192. Grounds for demurrer in general.
 - (1). In general.
 - (2). Uncertainty, indefiniteness, or lack of particularity.
 - (3). Pleading conclusions.
 - (4). Alternative, argumentative, or hypothetical allegations.
 - (5). Surplusage and irrelevant, immaterial, or redundant matter.
 - (6). Matter not appearing on face of pleading.
- 193. Grounds for demurrer to declaration, complaint, petition, or statement.
 - (1). In general.
 - (2). Improper form of action and existence of other remedy.
 - (3). Want of jurisdiction.
 - (4). Premature commencement of action and laches.
 - (5). Insufficiency of facts to constitute cause of action.
 - (6). Misjoinder of causes of action, duplicity, or failure to separately state and number.
 - (7). Want of or defective prayer.
 - (8). Demand for excessive or unauthorized relief or damages.
 - (9). Failure to attach or file written instruments or exhibits and questions relating thereto.
- 194. Grounds for demurrer to plea or answer, or to defense therein.
 - (1). In general.
 - (2). Pleas in abatement.
 - (3). Inconsistent defenses and matter constituting partial defense.
 - (4). Pleading matter admissible under other pleas.
 - (5). Denials.
- 195. Grounds for demurrer to set-off, counterclaim, or cross-complaint.
- 196. Grounds for demurrer to replication or reply or to subsequent pleadings.
- 197. Right to demur, and leave of court.
- 198. Joint or separate demurrers.
- 199. Time for filing or serving demurrer.

302. PLEADING**V. DEMURRER OR EXCEPTION.(Cont'd)**

- 200. Form and requisites of demurrer in general.
- 201. Form and requisites of demurrer under codes of procedure.
- 202. Demurrer incorporated in answer.
- 203. Scope and extent of demurrer in general.
- 204. Demurrer to part of pleading or to pleading good in part.
 - (1). In general.
 - (2). Demurrer to declaration, complaint, or petition in general.
 - (3). Pleading setting up several theories, or causes of action, or grounds of recovery.
 - (4). Pleading good as to some of the parties.
 - (5). Demurrer to plea, answer, or cross-complaint.
 - (6). Demurrer to reply.
 - (7). Demurrer to part of pleading.
- 205. General demurrer.
 - (1). In general.
 - (2). Objections reached in general.
 - (3). Technical or formal defects.
 - (4). Misjoinder of causes of action and duplicity.
 - (5). Uncertainty, indefiniteness, or redundancy.
 - (6). Ambiguity, argumentativeness, or alternative allegations.
- 206. Special demurrer.
- 206.1. — In general.
- 207. — Nature and necessity.
- 208. — Specification of grounds.
- 209. — Scope and extent.
- 210. Speaking demurrer.
- 211. Demurrer ore tenus.
- 212. Abandonment or waiver of demurrer.
- 213. Operation and effect of demurrer in general.
- 214. Admissions by demurrer.
 - (1). In general.
 - (2). Facts well pleaded.
 - (3). Specific matters admitted in general.
 - (4). Inferences and conclusions of fact.
 - (5). Conclusions of law and construction of written instruments.

V. DEMURRER OR EXCEPTION.(Cont'd)

- (6). Admissions as to statutes or as to foreign laws.
- (7). Fraud.
- (8). Purpose, scope, and effect of admissions.
- 215. Joinder in issue on demurrer.
- 216. Scope of inquiry and matters considered on demurrer in general.
 - (1). In general.
 - (2). Process, pleadings, and other documents.
 - (3). Objections not specified as grounds for demurrer.
- 217. Effect of demurrer as opening record.
 - (1). In general.
 - (2). Demurrer to plea, answer, or cross-petition.
 - (3). Demurrer to replication or reply or subsequent pleadings.
- 218. Hearing and determination on demurrer.
 - (1). In general.
 - (2). Time, place, and notice.
 - (3). Findings, decision, order, or judgment.
 - (4). Dismissal or nonsuit.
 - (5). Reconsideration of decision.
- 219. Operation and effect of decision on demurrer.
- 220. — In general.
- 221. — Overruling demurrer.
- 222. — Pleading over after demurrer overruled.
- 223. — Sustaining demurrer.
- 224. — Sustaining demurrer to part of pleading.
- 225. — Amendment or further pleading after demurrer sustained.
 - (1). In general.
 - (2). Authority and discretion of court.
 - (3). Time to amend.
- 226. — Effect on subsequent pleading.
- 227. Failure to demur.
- 228. Exceptions to pleadings in general.
 - 228.1. Constitutional and statutory provisions.
 - 228.2. Nature and office of exceptions and pleadings subject thereto.
 - 228.3. Exceptions available to different persons.
 - 228.4. Estoppel to except.

302. PLEADING**V. DEMURRER OR EXCEPTION.(Cont'd)**

- 228.5. Joint or separate exceptions.
- 228.6. Dilatory exceptions.
- 228.7. Dilatory exception of vagueness.
- 228.8. Peremptory exceptions.
- 228.9. — In general; relating to forms.
- 228.10. — Founded on law in general.
- 228.11. — No cause of action.
- 228.12. — No right of action.
- 228.13. General exceptions.
- 228.14. Special exceptions.
- 228.15. Time to plead and waiver.
- 228.16. Hearing and matters considered.
- 228.17. — In general.
- 228.18. — Exhibits and other documents, including pleadings other than one excepted to.
- 228.19. — Admissions in general.
- 228.20. — Facts.
- 228.21. — Conclusions.
- 228.22. — Specific allegations.
- 228.23. Determination and operation and effect thereof.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.

- 229. Right to amend pleadings in general.
- 230. Statutory provisions.
- 231. Amendment as of course.
- 232. Amendment on court's own motion.
- 233. Leave of court to amend.
- 233.1. — In general.
- 234. — Necessity.
- 235. — Authority of court in general.
- 236. — Discretion of court.
 - (1). In general.
 - (2). Affected by time of application in general.
 - (3). During trial.
 - (4). After evidence introduced, submission of case, or rendition of judgment.
 - (5). Amendment to conform to proofs.
 - (6). Subject-matter of amendment in general.
 - (7). New or different cause of action or defense.
- 237. — Amendment to conform to proofs.
 - (1). In general.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- (2). Necessity for amendment.
- (3). Condition of cause and time for amendment in general.
- (4). Amendment after verdict or judgment.
- (5). Objection to evidence and failure to object.
- (6). Variances amendable in general.
- (7). Place, time, or amount.
- (8). New or different cause of action or defense.
- 238. — Application for leave, and determination thereon in general.
 - (1). In general.
 - (2). Notice of application and presentation and service of amendment.
 - (3). Affidavits and other proofs.
 - (4). Hearing, determination, and order.
 - (5). Compliance or failure to comply with order or leave.
- 239. — Conditions on granting leave.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Conditions and terms in general.
 - (4). Costs, fees, and expenses.
- 240. Mode of making amendment.
- 241. Form and sufficiency of amended pleading in general.
- 242. Amendment of declaration, complaint, petition, or statement.
 - 242.1. — In general.
- 243. — Defects amendable in general.
- 244. — Necessity for amendment.
- 245. — Condition of cause and time for amendment.
 - (1). In general.
 - (2). Laches.
 - (3). During trial in general.
 - (4). After evidence introduced or submission of case.
 - (5). After reference or on inquest of damages.
 - (6). After verdict.
 - (7). After judgment or motion therefor.

302. PLEADING**VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)**

- 246. — Subject-matter and grounds in general.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
- 247. — Matters arising or discovered after original pleading.
- 248. — New or different cause of action.
 - (1). In general.
 - (2). What constitutes new cause in general.
 - (3). Actions ex contractu in general.
 - (4). Actions on contract or for breach thereof.
 - (5). Actions on insurance policies or for assessments.
 - (6). Actions for price or for breach of warranty.
 - (7). Actions on account or for an accounting.
 - (8). Actions for deposits.
 - (9). Actions ex delicto in general.
 - (10). Actions based on negligence in general.
 - (11). Actions for personal injuries in general.
 - (12). Actions for injuries to employees.
 - (13). Actions based on fraud or misrepresentation.
 - (14). Actions for damages from fire.
 - (15). Actions for penalties.
 - (16). Equitable suits or proceedings in general.
 - (17). Miscellaneous actions or proceedings.
- 249. — Change of form of action.
 - (1). In general.
 - (2). Changing from contract to tort and vice versa.
 - (3). Equitable and legal actions.
 - (4). Particular forms of action.
- 250. — As to relief prayed.
- 251. — Sufficiency of amendment.
- 252. — Operation and effect in general.
 - (1). In general.
 - (2). Abandonment or supersedure of prior pleading.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- 253. — Plea or answer to amended pleading.
- 254. — Demurrer to amended pleading.
- 255. Amendment of plea or answer.
 - 255.1. — In general.
- 256. — Defects amendable in general.
- 257. — Necessity for amendment.
- 258. — Condition of cause and time for amendment.
 - (1). In general.
 - (2). Laches.
 - (3). During trial in general.
 - (4). After evidence introduced or submission of case.
 - (5). After verdict or judgment or motion therefor.
- 259. — Subject-matter and grounds in general.
- 260. — Matters arising or discovered after original pleading.
- 261. — New or different defense.
- 262. — New set-off or counterclaim.
- 263. — Sufficiency of amendment.
- 264. — Operation and effect in general.
- 265. — Replication or reply to amended pleading.
- 266. — Demurrer to amended pleading.
- 267. Amendment of cross-complaint.
- 268. Amendment of affidavit of defense, or of merits.
- 269. Amendment of replication or reply and of subsequent pleadings.
- 270. Amendment of demurrer.
- 271. Amendment as to signature or verification.
- 272. Plea puis darrein continuance.
- 273. Supplemental pleading.
 - 273.1. — In general.
- 274. — Nature and office.
- 275. — Right to plead in general.
- 276. — Leave of court.
- 277. — Necessity, subject-matter, and grounds in general.
- 278. — Mode and form in general.
- 279. — Supplemental complaint, petition, or statement.
 - (1). In general.

302. PLEADING**VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)**

- (2). Condition of cause and time for amendment.
- (3). Subject-matter.
- (4). New or different cause of action or relief.
- 280. — Supplemental answer.
- 281. — Supplemental affidavit of defense.
- 282. — Supplemental reply.
- 283. — Answer or reply to supplemental pleading.
- 284. — Demurrer or exception to supplemental pleading.
- 285. Further, additional, or substituted pleading.
- 286. Repleader.

VII. SIGNATURE.

- 287. Signature of party.
- 288. Signature and certificate of counsel.

VIII. VERIFICATION.

- 289. Necessity for verification and effect of omission.
- 290. — In general.
 - (1). In general.
 - (2). Declaration, complaint, or petition.
 - (3). Plea, answer, or reply.
 - (4). Bill of particulars.
 - (5). Amended or altered pleading and plea puis darrein continuance.
- 291. — Actions or pleadings based on written instruments.
 - (1). In general.
 - (2). Genuineness, execution, or signature.
 - (3). Policy or certificate of insurance.
 - (4). Deeds or mortgages.
- 292. — Actions on accounts.
- 293. — Dilatory defenses and matter in abatement.
- 294. — Pleadings subsequent to verified pleading.
- 295. Persons who may verify pleading.
- 296. — In general.
- 297. — Complaintiffs or codefendants.
- 298. — Agents or attorneys.
- 299. Time for verification.

VIII. VERIFICATION.(Cont'd)

- 300. Sufficiency of verification.
- 301. — In general.
 - (1). In general.
 - (2). Persons before whom verification may be made.
 - (3). Knowledge, information, and belief.
- 302. — By agent or attorney.
- 303. Amendment of verification.
- 304. Operation and effect of verification.

IX. PROFERT OR OYER.

- 305. Profert.
- 306. Oyer.

X. EXHIBITS.

- 307. Exhibits annexed to pleading.
- 308. Written instruments or copies thereof filed with pleading.
- 309. Production and inspection of written instrument referred to in pleading.
- 310. Construction, operation, and effect in general.
- 311. Necessity and effect of reference in pleading to exhibits annexed or filed.
- 312. Variance between pleading and instrument annexed, filed, or referred to.

XI. BILL OF PARTICULARS.

- 313. Nature and office of bill of particulars.
- 314. Causes in which particulars may be required.
- 315. Right to particulars in general.
- 316. Authority and discretion of court.
- 317. Particulars of cause of action.
 - (1). In general.
 - (2). Actions ex delicto in general.
 - (3). Actions for personal injuries.
 - (4). Actions based on fraud or fraudulent representations.
 - (5). Actions ex contractu.
 - (6). Actions on account stated or for an accounting.
- 318. Particulars of defense in general.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
- 319. Particulars of set-off or counterclaim.

302. PLEADING**XI. BILL OF PARTICULARS.**(Cont'd)

- 320. Knowledge of parties as to subject-matter.
- 321. Ability to furnish particulars.
- 322. Demand for bill.
- 323. Application for bill, and proceedings thereon.
 - (1). In general.
 - (2). Time for application and notice thereof.
 - (3). Affidavits and other proofs.
 - (4). Determination and order.
- 324. Form and requisites of bill.
- 325. Amendment of bill.
- 326. Further or additional bill.
- 327. Construction and operation of bill in general.
- 328. Variance between pleading and bill.
- 329. Failure to furnish particulars.

XII. COPY OF ACCOUNT.

- 330. Copy of account alleged in pleading.

XIII. FILING AND SERVICE.

- 331. Purpose of filing or service in general.
- 332. Necessity for filing or service.
- 333. Time for filing or service.
- 334. Demand or notice or other proceedings to compel filing or service.
- 335. Requisites and sufficiency of filing.
- 336. Sufficiency of service and proof thereof.
- 337. Operation and effect of filing or service.
- 338. Acceptance and return of pleadings.

XIV. WITHDRAWAL.

- 339. In general.

XV. LOST OR DESTROYED PLEADINGS.

- 340. In general.

XVI. MOTIONS.

- 341. Scope and purposes of remedy by motion in general.
- 342. Judgment on pleadings.
- 343. — In general.
- 344. — Authority and discretion of court.
- 345. — Insufficient cause of action or defense.
 - (1). In general.

XVI. MOTIONS.(Cont'd)

- (1.1). Affidavit of defense.
- (1.2). Affidavit of defense raising questions of law.
- (1.3). Answer.
- (1.4). Complaint, declaration, petition or statement of claim.
- (1.5). Counterclaim.
- (1.6). Reply and reply raising questions of law.
- (2). Judgment on denial of allegations.
- 346. — Frivolous pleading.
- 347. — Defective pleading.
- 348. — Want of or insufficient affidavit of defense or of merits.
- 349. — Admissions in pleading.
- 350. — Application and proceedings thereon.
 - (1). In general.
 - (2). Time for proceedings.
 - (3). Hearing, determination, and relief.
 - (3.1). — In general.
 - (4). — Admissions by motion in general.
 - (5). — Well pleaded facts, admission of.
 - (6). — Matters not admitted.
 - (7). — Scope of inquiry; questions to be determined.
 - (8). — Matters considered.
 - (9). — Order or judgment.
 - (10). — Operation and effect of decision; amendment or pleading over.
- 351. Striking out pleading or defense.
Dismissal for defects in pleadings, see PRETRIAL PROCEDURE.
- 352. — In general.
- 353. — Authority and discretion of court.
- 354. — Insufficient allegations or denials.
- 355. — Defective or irregular pleading.
- 356. — Amended or supplemental pleading.
- 357. — Bill of particulars.
- 358. — Frivolous pleading.
- 359. — Sham answer or defense.
- 360. — Application and proceedings thereon.
- 361. Striking out matter from pleading.

302. PLEADING**XVI. MOTIONS.**(Cont'd)

- 362. — In general.
 - (1). In general.
 - (2). Grounds for striking out matter in general.
 - (3). Sham, frivolous, or immaterial allegations.
 - (4). Inconsistent allegations and allegations changing issues.
 - (5). Amended pleading.
- 363. — Authority and discretion of court.
- 364. — Irrelevant, redundant, or scandalous matter.
 - (1). In general.
 - (2). Irrelevant matter.
 - (3). Redundant matter.
 - (4). Scandalous and impertinent matter.
 - (5). Matters of evidence and conclusions.
 - (6). Surplusage and unnecessary matter.
- 365. — Application and proceedings thereon.
 - (1). In general.
 - (2). Nature, form, and requisites of proceeding.
 - (3). Hearing, determination, and order.
- 366. — Operation and effect.
- 367. Making more definite and certain.
 - (1). In general.
 - (2). Declaration, complaint, or petition in general.
 - (3). Actions ex contractu.
 - (4). Actions ex delicto.
 - (5). Plea or answer or subsequent pleadings.
 - (6). Application and proceedings thereon.
- 368. Separating and numbering causes of action or defenses.
- 369. Election.
 - (.5). In general.
 - (1). Causes of action in general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
 - (4). Defenses in general.
 - (5). Demurrer and answer.
 - (6). Application and proceedings thereon.

XVII. ISSUES, PROOF, AND VARIANCE.

- 370. Nature and requisites of issue.
- 371. Materiality of issues.
- 372. Scope of issues of fact.
- 373. Matters to be proved.
 - 373.1. — In general.
- 374. — Allegations in general.
- 375. — Surplusage and unnecessary allegations.
 - 376. — Admissions in general.
 - 377. — Admissions by failure to deny.
 - 378. — Denials.
 - 379. Evidence admissible under pleadings.
 - 379.1. — In general.
 - 380. — Conformity to pleadings in general.
 - 381. — Scope and sufficiency of allegations.
 - (1). In general.
 - (2). Declaration, complaint, or petition.
 - (3). Plea or answer, or subsequent pleadings.
- 382. — General issue or general denial.
 - (1). In general.
 - (2). Title, ownership, or possession.
 - (3). Set-off, counterclaim, or cross-complaint.
- 383. — General issue, with notice or leave as to special matter.
- 384. — Set-off or counterclaim.
- 385. — Bill of particulars.
- 386. Variance between allegations and proof.
 - 386.1. — In general.
- 387. — Nature and effect in general.
- 388. — Materiality to issue.
- 389. — Extent of variance in general.
- 390. — Place.
- 391. — Time.
- 392. — Parties or other persons.
- 393. — Property or other subject-matter.
- 394. — Written instruments.
- 395. — Elements or incidents of cause of action.
- 396. — Matters of defense.
- 397. — Nature or extent of relief.
- 398. — Effect of variance to mislead or surprise.
- 399. — Failure of proof.

302. PLEADING**XVIII. WAIVER OR CURE OF DEFECTS
AND OBJECTIONS.**

- 400. Defects and objections which may be cured or waived.
- 401. Cure by subsequent pleading.
- 402. — In general.
- 403. — Pleading of adverse party.
 - (1). In general.
 - (2). Defects in declaration, petition, or complaint in general.
 - (3). Actions ex contractu.
 - (4). Actions ex delicto.
 - (5). Equitable suits and proceedings.
- 404. Waiver of objections to pleadings in general.
- 405. Waiver of objections to declaration, complaint, petition, or statement, or want thereof.
- 406. — In general.
 - (1). In general.
 - (2). Want of declaration.
 - (3). Pleading over and trial on merits in general.
 - (4). Effect of stipulation.
 - (5). Nature of defect or objection and sufficiency of allegations in general.
 - (6). Theory and form of action.
 - (7). Ambiguity, uncertainty, indefiniteness, or lack of particularity.
 - (8). Misjoinder of causes, duplicity, or failure to separately state and number.
 - (9). Effect of admission of evidence and aid by proof.
- 407. — Technical or formal defects and objections.
- 408. — Failure to state cause of action.
- 409. Waiver of objections to plea or answer or want thereof.
 - (1). In general.
 - (2). Want of plea or answer and joinder in issue thereon.
 - (3). Pleading over and trial on merits.
 - (4). Effect of admission of evidence and aid by proof.
- 410. Waiver of objections to affidavit of defense or want thereof.

**XVIII. WAIVER OR CURE OF DEFECTS
AND OBJECTIONS.(Cont'd)**

- 411. Waiver of objections to set-off or counterclaim or cross-complaint.
- 412. Waiver of objections to replication or reply or want thereof.
- 413. Waiver of objections to pleadings subsequent to replication or want thereof.
- 414. Objections to rulings on pleas in abatement.
- 415. Objections to rulings on demurrer.
- 416. — In general.
- 417. — Waiver by amendment.
- 418. — Waiver by pleading over.
 - (1). In general.
 - (2). Particular defects and objections.
 - (3). Demurrer to plea or answer and subsequent pleadings.
- 419. Objections to rulings on exceptions.
- 420. Objections to amendments and rulings relating thereto.
 - (1). In general.
 - (2). Waiver of objections in general.
 - (3). Waiver by pleading over and trial on merits.
- 421. Objections to supplemental pleadings and rulings relating thereto.
- 422. Want or insufficiency of signature, certificate of counsel, or verification.
- 423. Objections to exhibits or other instruments annexed to or filed with pleadings or want thereof.
- 424. Objections to bill of particulars or copy of account, or want thereof.
- 425. Objections to filing or service.
- 426. Objections to rulings on motions.
 - (1). In general.
 - (2). Waiver by amendment.
 - (3). Waiver by pleading over and trial on merits.
- 427. Objections to evidence as not within issues.
- 428. Objections to evidence on ground of insufficiency of pleading.
 - (1). In general.
 - (2). Sufficiency of pleadings in general.
 - (3). Particular defects or objections in general.
 - (4). Failure to state cause of action or defense.

303. PLEDGES

**XVIII. WAIVER OR CURE OF DEFECTS
AND OBJECTIONS.(Cont'd)**

- (5). Nature and form of objection.
- (6). Hearing and determination.
- (7). Waiver of objection.

429. Objections to evidence on ground of insufficiency of bill of particulars or variance between bill and pleading.

430. Objections to evidence on ground of variance.

- (1). In general.
- (2). Waiver of variance.

XIX. AIDER BY VERDICT OR JUDGMENT.

432. In general.

433. Defects in or want of declaration, complaint, petition, or statement.

- (1). In general.
- (2). Sufficiency of pleading or allegations in general.
- (3). Nature of defects or objections in general.
- (4). Technical or formal defects.
- (5). Failure to state cause of action or defense.
- (6). Nature of omission in general.
- (7). Omissions in actions ex contractu.
- (8). Omissions in actions ex delicto.
- (9). Uncertainty, indefiniteness, and argumentativeness.
- (10). Misjoinder of causes and duplicity.

434. Defects in or want of plea or answer.

435. Defects in set-off or counterclaim or cross-complaint.

436. Defects in or want of replication or reply.

437. Defects in or want of pleadings subsequent to replication.

303. PLEDGES

SUBJECTS INCLUDED

Delivery of possession of personal property as security for payment of money or perform-

ance of contracts or other obligations in general

Nature, requisites, incidents, operation and effect of such delivery

Evidence relating thereto

Rights, duties, and liabilities of the parties as between themselves and as to others

Extinguishment, waiver, or release of lien

Sale of property for enforcement of pledge

Redemption

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Corporate stock, pledges of, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Fraud as to creditors and subsequent purchasers, see FRAUDULENT CONVEYANCES

Holders in due course, pledgees of negotiable securities as, see COMMERCIAL PAPER, BONDS, MUNICIPAL CORPORATIONS, and other specific topics

Particular classes of persons, pledges by or to, see INFANTS, MENTAL HEALTH, and other specific topics—

Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Partners, see PARTNERSHIP

Unincorporated associations and companies, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV

Pawnbrokers, see FINANCE, BANKING, AND CREDIT XIII

Representative or fiduciary capacities, pledges by persons in, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT

Secured transactions governed by the Uniform Commercial Code, see SECURED TRANSACTIONS

- 1. Nature and essentials in general.
- 2. What law governs.
- 3. Statutory provisions.
- 4. Pledge distinguished from other transactions.
Pledge distinguished from sale, see SALES ¶521.
- 5. Property which may be subject of pledge.

303. PLEDGES

- | | |
|---|--|
| <ul style="list-style-type: none"> 6. Title or interest of pledgor. 7. Debts or liabilities which may be secured. 8. Parties. 9. Consideration. 10. Delivery and possession. 11. — In general. 12. — Written instruments. 13. Pledge in writing. 14. Equitable pledge. 15. Absolute transfer as pledge. 16. Evidence as to character of transaction. <ul style="list-style-type: none"> (.5). In general. (1). Presumptions and burden of proof. (2). Admissibility. (3). Weight and sufficiency. (4). Questions for jury. 17. Recording and registration. 18. Operation and effect in general. 19. Parties and debts or liabilities secured. 20. Property or interest pledged. 21. Title to property pledged. 22. Nature and extent of lien. 23. Priorities. 24. Pledges as bona fide purchasers. 25. Waiver or loss of lien. 26. Possession or control of property. 27. Use or profits of property and expenses incurred. 28. Care of property and negligence of pledgee. 29. Sale or other disposition of property and failure to sell or convert. 30. Enforcement of right of action pledged and failure to collect or fix liability. <ul style="list-style-type: none"> (.5). In general. (1). Right and duty of pledgor to enforce. (2). Power and duty of pledgee to enforce. (3). Duties and liabilities of pledgeholder. (4). Operation and effect of enforcement. (5). Right of action or defense by pledgor against pledgee for lack of diligence or breach of duty. | <ul style="list-style-type: none"> 31. Conversion of or willful injury to property before default. <ul style="list-style-type: none"> (1). In general. (2). Assertion of ownership by pledgee. (3). Surrendering securities to obligor. (4). Sale or other disposition of property pledged. 32. Actions for possession or proceeds of property. <ul style="list-style-type: none"> 32.1. — In general. 33. — Between pledgor and pledgee. 34. — Against third persons. 35. Actions for damages. <ul style="list-style-type: none"> 35.1. — In general. 36. — Between pledgor and pledgee. 37. — Against third persons. 38. Assignment of pledge or debt. 39. Transfer of property by pledgee. 40. — In general. 41. — Purchasers from pledgee. 42. — Pledges of pledgee. 43. Transfer of interest of pledgor. 44. Payment or other discharge of debt. 45. Return of property on payment or other discharge. <ul style="list-style-type: none"> 45.1. — In general. 46. — Duty of pledgee. 47. — Recovery of property by pledgor. 48. — Conversion by failure to return. 49. Redemption. 50. — In general. 51. — Actions to redeem and for accounting. 52. Enforcement. <ul style="list-style-type: none"> 52.1. — In general. 53. — Remedies of pledgee in general. 54. — Default of pledgor. 55. — Actions on debt or liability secured. 56. — Sale of property. <ul style="list-style-type: none"> (1). In general. (2). Power of sale. (3). Demand of payment. (4). Notice of sale. (5). Validity of sale in general. (6). Purchase by pledgee. (7). Title or rights of purchaser. (8). Actions to set aside. |
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306. POSTAL SERVICE

- 57. — Actions to foreclose.
- 58. — Actions to enforce right of action pledged.
 - (.5). In general.
 - (1). Grounds of action and defenses.
 - (2). Form of remedy.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (5.5). Trial.
 - (6). Amount of recovery and judgment.
- 59. — Proceeds and surplus.
- 60. — Operation and effect.

305. POSSESSORY WARRANT**SUBJECTS INCLUDED**

- Summary proceedings to determine the fact of previous peaceable possession of personal property and to restore it to such previous possessor
- Nature and scope of the remedy in general
- Grounds of such proceedings and defenses thereto
- By and against whom and as to what property such proceedings may be maintained
- Procedure therein
- Judgments and enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Actions for damages for taking, converting, or detaining personal property, see CONVERSION AND CIVIL THEFT
- Actions for recovery of personal property founded on—
 - Right of possession, see REPLEVIN
 - Right of property, see DETINUE
- 1. Nature and scope of remedy.
- 2. Grounds.
- 3. Proceedings for taking and delivery of property.

- 4. Trial and determination.
- 5. Judgment and delivery of possession in general.
- 6. Recognizances for possession and liabilities thereon.
- 7. Certiorari to review proceedings.

306. POSTAL SERVICE**SUBJECTS INCLUDED**

- Conduct and regulation of communication by mail
- Constitutional and statutory provisions relating thereto
- Establishment, organization and powers of post office department
- Establishment, change, and discontinuance of post offices, post roads, postal routes, etc.
- Appointment and removal, rights, powers, duties, and liabilities of postmasters and other postal officers and agents
- Carriage of the mails and contracts therefor
- Mailable matter, rates of postage thereon, and receipt and delivery thereof
- Violations of postal laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Notice by mail, see NOTICE, COMMERCIAL PAPER, and other specific topics
- Presumption as to due transmission and delivery of mail, see EVIDENCE

- I. POSTAL SERVICE IN GENERAL, ¶1–12.
- II. MAIL IN GENERAL, ¶13–26.
- III. OFFENSES AGAINST POSTAL LAWS, ¶27–53.

I. POSTAL SERVICE IN GENERAL.

- 1. Control and regulation of postal service in general.
- 2. Constitutional and statutory provisions.
- 3. The postal service.
 - 3.1. — In general.
- 4. — Postmaster General.

306. POSTAL SERVICE**I. POSTAL SERVICE IN GENERAL.(Cont'd)**

- 5. — Officers, clerks, and employees.
- 6. Post offices.
- 7. Postmasters.
 - (1). In general.
 - (2). Liabilities on bonds.
- 8. Deputy and assistant postmasters.
- 9. Clerks in post offices.
- 10. Letter carriers.
 - (.5). In general.
 - (1). Appointment, removal, or reduction in rank.
 - (2). Compensation in general.
 - (3). Hours of work and overtime.
 - (4). Liabilities on bonds.
- 11. Special, local, and route agents.
- 12. Postal revenues, property, funds, and accounts.

II. MAIL IN GENERAL.

- 13. Mailable matter in general.
- 14. Exclusion of matter from mails.
- 15. Postage.
- 16. Postage stamps, stamped envelopes, and postal cards.
- 18. Money orders.
- 19. Deposit, collection, and forwarding of mail matter.
- 20. Post roads and routes and modes of conveyance of mails.
- 21. Contracts for carrying mails.
 - (1). In general.
 - (2). Subcontractors, assignees, and substitutes.
 - (3). Bonds.
 - (4). Compensation.
- 22. Carriage of mails.
- 23. Delivery of mail in general.
- 24. Dead letters, unclaimed matter, and requests for return.
- 26. Fraud orders and return of mail to senders.

III. OFFENSES AGAINST POSTAL LAWS.

- 27. Violations of postal regulations in general.
- 28. Obstructing passage of mail.
- 29. Conveyance of mail matter out of mail.
- 30. Mailing obscene matter or matter for indecent or immoral use.

III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)

- 31. — In general.
- 31.1. — Nature and elements of offense in general.
- 31.2. — Statutory terms defined.
- 31.3. — Knowledge, motive or intent.
- 31.4. — Invitation or inducement for improper or obscene purpose.
- 31.5. — Publications concerning sex and sexual diseases.
- 31.6. — Information as to birth control or abortions.
- 31.7. — Matter objectionable in part.
- 31.8. — Entrapment.
- 31.9. — Persons liable.
- 32. — Sealed letters or packages.
- 33. Mailing defamatory or threatening matter.
- 34. Mailing matter concerning lotteries or gift enterprises.
- 35. Use of mails to defraud.
 - (.5). In general.
 - (1). Statutory provisions.
 - (2). Nature and elements of offense in general.
 - (3). Parties to communications.
 - (4). Legality of object.
 - (5). Knowledge and intent in general.
 - (6). Intent that mails be used as part of scheme.
 - (7). Success or possibility of successful issue of artifice or scheme.
 - (8). Effectiveness of matter mailed to further fraud.
 - (9). Injury from fraud.
 - (10). Nature of scheme or device in general.
 - (11). False pretenses or representations.
 - (11.1). — In general.
 - (12). — Value or character of goods.
 - (13). — Future profits.
 - (14). — Financial standing or credit.
 - (15). — Orders for goods.
 - (16). Extortion or blackmail.
 - (17). Selling or offering to sell counterfeit money.

307. POWERS**III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)**

- (18). Sale of charms or amulets, fortune telling, or pretenses to occult powers.
- (19). Entrapment.
- (20). Persons liable.
- 36. Misconduct in official capacity or employment in general.
- 37. Illegal sale or other disposition of postage stamps.
- 38. Embezzlement of money order funds.
- 39. Detention, opening, or destruction of mail matter by postmaster or employee.
- 40. Embezzlement of mail matter.
- 41. — In general.
- 42. — Decoy letters or packages.
- 43. Taking mail matter to obstruct or pry into correspondence of another.
- 44. Stealing or fraudulently obtaining mail matter.
- 45. Robbery of mail.
- 46. Breaking and entering post office.
- 47. Searches, seizures, and opening letters or packages.
- 48. Indictment or information.
 - (.5). In general.
 - (1). Mailing unmailable matter in general.
 - (2). Mailing obscene matter or matter for indecent or immoral use.
 - (3). Mailing matter concerning lotteries.
 - (4). Use of mails to defraud.
 - (4.1). — In general.
 - (4.2). — Scheme or artifice in general.
 - (4.3). — Knowledge, motive or intent.
 - (4.4). — False pretenses or representations.
 - (4.6). — Contents of letters.
 - (4.7). — Use of the mails.
 - (4.8). — Time of devising scheme and depositing mail.
 - (5). Embezzlement of mail matter.
 - (6). Stealing or fraudulently obtaining mail matter.
 - (7). Breaking into post office.
 - (7.5). Miscellaneous offenses.

III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)

- (8). Issues, proof, and variance.
- 49. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (2.1). — In general.
 - (3). — Mailing obscene matter or matter for indecent or immoral use.
 - (4). — Mailing matter concerning lotteries or gift enterprises.
 - (5). — Use of mails to defraud.
 - (6). — Embezzlement and stealing or fraudulently obtaining mail matter.
 - (7). — Robbery of mail.
 - (8). Weight and sufficiency.
 - (8.1). — In general.
 - (9). — Mailing obscene matter or matter for indecent or immoral use.
 - (10). — Mailing matter concerning lotteries or gift enterprises.
 - (11). — Use of mails to defraud.
 - (12). — Embezzlement and stealing or fraudulently obtaining mail matter.
 - (13). — Robbery of mail.
 - (14). — Breaking or entering post office.
 - 50. Trial and review.
 - 51. Sentence and punishment.
 - 52. Penalties and forfeitures.
 - 53. Civil liability for obstructing mail.

307. POWERS**SUBJECTS INCLUDED**

Authority reserved by or limited to one or more persons to dispose of property or an estate therein vested in another or others

Operation, execution, revocation, and extinguishment of the powers reserved or granted

307. POWERS

Rights and liabilities of donors or grantors, donees or grantees, and appointees or other beneficiaries of such powers in general
Remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Agents or attorneys, powers granted to, see
PRINCIPAL AND AGENT

Executor or administrator, power under will to sell property of estate, see **EXECUTORS AND ADMINISTRATORS**

Mortgages and trust deeds, powers of sale in, see **MORTGAGES AND DEEDS OF TRUST, CHATTEL MORTGAGES**

Trust, powers in, see **TRUSTS**

Validity and construction of particular instruments reserving or granting powers, see **REAL PROPERTY CONVEYANCES, WILLS, TRUSTS**

I. CREATION, EXISTENCE, AND VALIDITY, ¶1-15.

II. CONSTRUCTION AND EXECUTION, ¶16-44.

I. CREATION, EXISTENCE, AND VALIDITY.

1. Nature of powers.
2. What law governs.
3. Constitutional and statutory provisions.
4. Property subject of powers.
5. Purposes for which powers may be created.
6. Persons who may create powers.
7. To what persons powers may be granted.
8. Instruments creating powers.
9. Provisions granting or reserving powers in general.
10. Validity of powers in general.
11. Partial invalidity.
12. Modification or revocation.
13. Duration.
14. Suspension.
15. Release or other extinguishment.

II. CONSTRUCTION AND EXECUTION.

16. General rules of construction.
17. Extent of power granted.
18. — In general.
19. — Appointment or revocation.
20. — Sale, exchange, or mortgage.
21. — Lease.

II. CONSTRUCTION AND EXECUTION.(Cont'd)

22. — Management and improvement.
23. Power appendant, in gross, or collateral.
24. Interest of donee or grantee.
25. — In general.
26. — Rights and remedies of creditors.
27. Power coupled with an interest.
28. Assignment of power or of interest under power.
29. Duty to execute.
30. Persons authorized to execute.
31. Time of execution.
32. Mode of execution.
33. Intent to execute.
 - (.5). In general.
 - (1). Necessity of showing intent.
 - (2). Reference to power in general.
 - (3). Deeds.
 - (4). Instrument inoperative except as execution of power.
34. Instrument of execution.
 - (1). In general.
 - (2). Form and requisites of instrument.
35. Supervision of execution by courts.
36. Validity and sufficiency of execution.
 - (1). In general.
 - (2). What law governs.
 - (3). Illusory appointment.
 - (4). Partial invalidity.
37. Aiding defective execution.
38. Execution in excess of power.
39. Failure to execute.
40. Setting aside sale under power.
41. Rights and liabilities of appointees or beneficiaries.
42. Rights and liabilities of purchasers.
43. — In general.
44. — Application of purchase money.

307A. PRETRIAL PROCEDURE

SUBJECTS INCLUDED

Procedure preliminary to trial in civil actions generally

307A. PRETRIAL PROCEDURE

Depositions and discovery

Dismissal

Continuance

Pretrial conference

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**Criminal procedure, see **CRIMINAL LAW
and INDICTMENTS AND CHARGING
INSTRUMENTS**Divorce proceedings, see **DIVORCE**Docketing or setting cases for trial, see **TRIAL**Federal court procedure, see **FEDERAL
CIVIL PROCEDURE**

Judgment

— On pleadings, see **PLEADING and
FEDERAL CIVIL PROCEDURE**— Summary or default, generally, see
**JUDGMENT and FEDERAL CIVIL
PROCEDURE**Parties, see **PARTIES**Pleading, see **PLEADING**Privileged communications and confidential
relations, see **PRIVILEGED COMMUNI-
CATIONS AND CONFIDENTIALITY**Process, see **PROCESS****I. IN GENERAL, ¶1–10.****II. DEPOSITIONS AND DISCOVERY, ¶11–500.****(A) DISCOVERY IN GENERAL, ¶11–60.****(B) PERPETUATION OF TESTIMONY, ¶61–90.****(C) DISCOVERY DEPOSITIONS, ¶91–240.**1. **IN GENERAL, ¶91–120.**2. **PROCEEDINGS, ¶121–150.**3. **EXAMINATION IN GENERAL, ¶151–170.**4. **SCOPE OF EXAMINATION, ¶171–200.**5. **USE AND EFFECT, ¶201–220.**6. **FAILURE TO APPEAR OR TESTI-
FY; SANCTIONS, ¶221–240.****(D) INTERROGATORIES TO PAR-
TIES, ¶241–330.**1. **IN GENERAL, ¶241–270.**2. **SCOPE, ¶271–300.**3. **ANSWERS, ¶301–308.****II. DEPOSITIONS AND DISCOVERY**

—Cont'd

(D) INTERROGATORIES TO PARTIES

—Cont'd

4. **FAILURE TO ANSWER; SANC-
TIONS, ¶309–330.****(E) PRODUCTION OF DOCUMENTS
AND THINGS AND ENTRY ON
LAND, ¶331–450.**1. **IN GENERAL, ¶331–350.**2. **SUBJECT MATTER IN GENERAL, ¶351–370.**3. **PARTICULAR DOCUMENTS OR
THINGS, ¶371–400.**4. **PROCEEDINGS, ¶401–430.**5. **COMPLIANCE, ¶431–433.**6. **FAILURE TO COMPLY; SANC-
TIONS, ¶434–450.****(F) EXAMINATION OF PERSON, ¶451–470.****(G) REQUESTS FOR ADMISSIONS, ¶471–500.****III. DISMISSAL, ¶501–710.****(A) VOLUNTARY DISMISSAL, ¶501–530.****(B) INVOLUNTARY DISMISSAL, ¶531–710.**1. **IN GENERAL, ¶531–550.**2. **GROUND IN GENERAL, ¶551–580.**3. **WANT OF PROSECUTION, ¶581–620.**4. **PLEADING, DEFECTS IN, IN
GENERAL, ¶621–640.**5. **PARTICULAR ACTIONS OR SUB-
JECT MATTER, DEFECTS IN
PLEADING, ¶641–670.**6. **PROCEEDINGS AND EFFECT, ¶671–710.****IV. CONTINUANCE, ¶711–740.****V. PRETRIAL CONFERENCE, ¶741–753.****I. IN GENERAL.**

1. Procedure in general.

2. Rulings on questions of law.

3. Motions in limine; preclusion of evidence,
argument, or reference.**II. DEPOSITIONS AND DISCOVERY.****(A) DISCOVERY IN GENERAL.**

11. Control by court in general.

12. Constitutional and statutory provisions;
rules.

13. Construction of discovery provisions.

14. Nature and purpose.

307A. PRETRIAL PROCEDURE**II. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 14.1. — In general.
- 15. — Discovering truth, narrowing issues, and eliminating surprise.
- 16. — Preparation for pleading or trial.
- 17. Right to discovery and grounds for allowance or refusal.
- 17.1. — In general.
- 18. — Inconvenience or other detriment.
- 19. Discretion of court.
- 20. Liberality in allowance of remedy.
- 21. Actions and proceedings in which remedy is available.
- 22. Other remedy, availability or prior use of.
- 23. Persons subject.
- 24. Discovery methods and procedure.
- 25. Sequence and timing; condition of cause.
- 26. Showing of good cause.
- 27. Scope of discovery.
- 27.1. — In general.
- 28. — Grounds of claim or defense; “fishing expedition”.
- 29. — Matters admitted or otherwise known or available.
- 30. — Adverse party’s case, matters relating to.
- 31. Relevancy and materiality.
- 32. Probable admissibility at trial.
- 35. Work-product privilege.
- 36. Particular subjects of disclosure.
- 36.1. — In general.
- 37. — Insurance, matters relating to.
- 38. — Information secured in anticipation of litigation or in preparation for trial.
- 39. — Facts known and opinions held by experts.
- 40. — Identity and location of witnesses and others.
- 41. Objections and protective orders.
- 42. Sufficiency of disclosure; supplementation of responses.
- 43. Use and effect of disclosure.
- 44. Failure to disclose; sanctions.
- 44.1. — In general.
- 45. — Facts taken as established or denial precluded; preclusion of evidence or witness.
- 46. — Dismissal or default judgment.

(B) PERPETUATION OF TESTIMONY.

- 61. Nature and functions in general.
- 62. Time; condition of cause.
- 63. Right to take and use depositions in general.
- 64. Grounds for taking.
- 65. Persons whose depositions may be taken.
- 66. Proceedings and order.
- 67. Officers or persons authorized to take depositions.
- 68. Notice of taking.
- 69. Taking testimony.
- 69.1. — In general.
- 70. — Attendance of witnesses; compensation.
- 71. — Examination of witnesses.
- 72. Scope and subject matter.
- 73. Punishment of witness refusing to appear or testify; sanctions.
- 74. Making and requisites of deposition, return or certificate.
- 75. Use of deposition.
- 76. Admissibility in evidence.
- 76.1. — In general.
- 77. — Continued existence of grounds for taking; unavailability of witness.
- 78. — Part of deposition.
- 79. — Determination of admissibility.
- 80. Actions and proceedings in which deposition may be used.
- 81. Defects and objections.

(C) DISCOVERY DEPOSITIONS.**1. IN GENERAL.**

- 91. Nature and right to examine or take depositions in general.
- 92. Discretion and leave of court.
- 93. Grounds and purposes of examination.
- 94. Actions and proceedings in which depositions may be taken.
- 95. Other remedy, availability or prior use of; successive examinations.
- 96. Persons who may be examined.
- 96.1. — In general.
- 97. — Non-party witnesses in general; experts.
- 98. — Exclusive or particular knowledge, and hostile or reluctant witnesses, non-parties.
- 99. — Parties.

307A. PRETRIAL PROCEDURE**II. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 100. — Parties' agents or employees.
- 101. — Corporate officers, agents, and employees.
- 102. — Public bodies and their officers and employees.

2. PROCEEDINGS.

- 121. In general.
- 122. Time and condition of cause.
- 123. Notice of examination or motion or application for leave to examine.
- 123.1. — In general.
- 124. — Sufficiency in general.
- 125. — Affidavits and evidence.
- 126. — Subject of examination.
- 127. — Service; time of notice.
- 128. — Hearing, determination, and order for taking.
- 129. Subpoena, compelling attendance.
- 130. Subpoena duces tecum; production of documents or tangible things.
- 131. Protective orders before examination.
- 131.5. — In general.
- 132. — Vacating notice or order.
- 133. — Time and place of, and procedure for, taking.
- 134. — Payment of expenses.
- 135. — Limiting scope of examination.
- 136. — Motions for protective orders and proceedings thereon.
- 137. Terminating or limiting pending oral examination.
- 138. Persons before whom depositions may be taken.
- 139. Record of testimony; furnishing copies.

3. EXAMINATION IN GENERAL.

- 151. In general.
- 152. Order of taking more than one examination.
- 153. Time and place of examination.
- 153.1. — In general.
- 154. — Nonresident deponents.
- 155. Written questions, depositions on.
- 156. Objections and waiver thereof.

4. SCOPE OF EXAMINATION.

- 171. In general.
- 172. Grounds of claim or defense.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 173. Relevancy and materiality.
- 174. Probable admissibility at trial of evidence sought.
- 175. Admitted matters and matters already known or available.
- 176. Business transactions and practices in general.
- 177. Circumstances of accident or injury and cause thereof.
- 178. Documents or tangible things, examination involving.
- 179. Extent of injury or damage.
- 180. Insurance coverage.
- 181. Identity and location of witnesses or others.
- 182. Opinions and conclusions.
- 186. Work product privilege; trial preparation materials.

5. USE AND EFFECT.

- 201. Use.
- 201.1. — In general.
- 202. — Admissibility in general.
- 203. — Parties entitled to use and availability of deponent.
- 204. — Purpose.
- 205. — Part of deposition.
- 206. Effect.

6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS.

- 221. In general.
- 222. Order compelling answer.
- 223. Payment of expenses.
- 224. Facts taken as true or denial precluded; preclusion of evidence or witness.
- 225. Striking pleadings.
- 226. Dismissal or default judgment.
- 227. Contempt.

(D) INTERROGATORIES TO PARTIES.**1. IN GENERAL.**

- 241. Availability and procedure for use in general.
- 242. Nature and purpose.
- 243. Discretion and leave of court.
- 244. Actions in which interrogatories may be served.

307A. PRETRIAL PROCEDURE**II. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 245. Other remedy, availability or prior use of.
- 246. Parties and persons subject to interrogation.
- 247. Service or filing; annexation to pleading; time.
- 248. Number, form, and importance.
- 248.1. — In general.
- 249. — Specificity and definiteness.
- 250. Grounds of objection or avoiding answer in general.
- 251. Objections and proceedings thereon.
- 251.1. — In general.
- 252. — Time for objection.
- 253. — Showing in support; burden of proof.
- 254. Amendment or striking out; supplemental interrogatories.
- 255. Protective orders.

2. SCOPE.

- 271. In general.
- 272. Grounds of claim or defenses; relation to issues.
- 273. Relevancy and materiality.
- 274. Probable admissibility at trial of evidence sought.
- 275. Admitted matters and matters already known or available.
- 276. Adverse party's case, matters relating to in general.
- 277. Circumstances of accident or injury and cause thereof.
- 278. Documents or tangible things.
- 279. Extent of injury or damage.
- 280. Evidentiary matters.
- 281. Hearsay.
- 282. Identity and location of witnesses and others.
- 283. Insurance coverage.
- 284. Opinions, conclusions and matters unknown.
- 287. Work product privilege; trial preparation materials.

3. ANSWERS.

- 301. Answers in general.
- 302. Time for answer.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 303. Sufficiency; option to produce business records.
- 304. Amendment or supplementation.
- 305. Defects and objections; striking out answers.
- 306. Use and effect.
- 306.1. — In general.
- 307. — Admissibility in evidence.
- 308. — Persons entitled to use and persons against whom answers may be used.

4. FAILURE TO ANSWER; SANCTIONS.

- 309. In general.
- 310. Order compelling answer.
- 310.1. — In general.
- 311. Payment of expenses.
- 312. Preclusion of evidence or witnesses in general.
- 313. Undisclosed witnesses, preclusion.
- 314. Striking pleadings.
- 315. Dismissal.
- 316. Default judgment.

(E) PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON LAND.**1. IN GENERAL.**

- 331. Availability in general; nature and scope of remedy.
- 332. Actions and proceedings in which remedy is available.
- 333. Other remedy, availability or prior use of.
- 334. Persons subject.
- 335. Right to remedy and grounds in general.
- 336. Discretion and leave of court.
- 337. Grounds for refusal in general.

2. SUBJECT MATTER IN GENERAL.

- 351. In general.
- 352. Relevancy and materiality.
- 353. Probable admissibility at trial.
- 354. Existence, possession, custody, control, and location.
- 355. Matters known or otherwise available.
- 359. Work product privilege; trial preparation materials.

307A. PRETRIAL PROCEDURE**3. PARTICULAR DOCUMENTS OR THINGS.**

- 371. Documents, papers, and books in general.
- 372. Records and reports in general.
- 373. Accident or investigation reports, records, and tests.
- 374. Bank records; checks and deposits.
- 375. Business and financial records and reports.
- 376. Contracts, conveyances, and leases.
- 377. Corporate records.
- 378. Employment records.
- 379. Experts' reports; appraisals.
- 380. Government records and papers.
- 381. Insurance policies and related documents.
- 382. Medical and hospital records.
- 383. Photographs; X rays; sound recordings.
- 384. Statements.
- 384.1. — In general.
- 385. — Party's own statements obtained by other party.
- 386. — Statements of witnesses.
- 387. — Statements to insurers.
- 388. Taxes, matters relating to.
- 389. Transcripts or records of prior proceedings.
- 390. Objects and tangible things; entry on land.

4. PROCEEDINGS.

- 401. Procedure in general.
- 402. Time for application; condition of cause.
- 403. Request, notice, or motion and response or objection.
- 404. Affidavits and showing.
- 404.1. — In general.
- 405. — Good cause in general.
- 406. — Privilege.
- 407. — Relevancy and materiality.
- 408. — Designation of document or thing and contents thereof.
- 409. — Statements and reports.
- 410. — Burden of proof.
- 411. Determination.
- 412. Order.
- 413. Protective orders.
- 413.1. — In general.
- 414. — Privileged matters.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 415. — Payment of expenses; bond.
- 416. Successive applications.

5. COMPLIANCE.

- 431. Compliance in general.
- 432. Time, place, and mode of inspection; copying, photographing, and testing.
- 433. Use of items obtained.

6. FAILURE TO COMPLY; SANCTIONS.

- 434. In general.
- 435. Dismissal or default judgment.

(F) EXAMINATION OF PERSON.

Excludes examinations to determine existence and extent of personal injuries for purpose of determining damages, see DAMAGES ¶206, examinations in divorce cases, see DIVORCE ¶86 and blood tests in paternity proceedings, see CHILDREN OUT-OF-WED-LOCK ¶45.

- 451. In general.
- 452. Discretion of court.
- 453. Mental examination.
- 454. Blood tests.
- 455. Proceedings, order, and examination.
- 456. Use of information obtained.
- 457. Failure to submit to examination; sanctions.

(G) REQUESTS FOR ADMISSIONS.

- 471. In general.
- 472. Nature and purpose.
- 473. Subject matter.
- 474. Request; striking request.
- 475. Duty to respond.
- 476. Time for response.
- 477. Response.
- 477.1. — In general.
- 478. — Denial of duty to respond or statement of inability; objections and protective orders.
- 479. — Admission by defective response.
- 480. Use.
- 481. Effect.
- 482. Failure to respond; sanctions.
- 482.1. — In general.
- 483. — Admission by failure to respond.
- 484. — Directed verdict, dismissal, or judgment.

307A. PRETRIAL PROCEDURE**II. DEPOSITIONS AND DISCOVERY.(Cont'd)**

- 485. Costs and expenses upon improper failure to admit.
- 486. Withdrawal or amendment of response.

III. DISMISSAL.**(A) VOLUNTARY DISMISSAL.**

- 501. Right in general.
- 502. Discretion and leave of court.
- 503. Dismissal of part of cause of action.
- 504. Dismissal as to part of parties in general.
- 505. Class actions.
See also COMPROMISE, SETTLEMENT, AND RELEASE.
- 506. Time for dismissal; condition of cause.
- 506.1. — In general.
- 507. — Answer or joinder of issue, effect of in general.
- 508. — Counterclaim or other request for affirmative relief, effect of.
- 509. — Trial, dismissal during.
- 510. Grounds for objection.
- 511. Procedure to effect dismissal in general.
- 512. Motion or request and proceedings thereon.
- 513. Notice.
- 514. Order.
- 515. Terms and conditions.
- 515.1. — In general.
- 516. — Payment of costs and expenses.
- 517. Effect.
- 517.1. — In general.
- 518. — Parties and claims affected.
- 519. — Successive dismissals.
- 520. Vacation.

(B) INVOLUNTARY DISMISSAL.**1. IN GENERAL.**

- 531. Nature and scope of remedy in general.
- 532. Statutory provisions; rules.
- 533. Other remedy, availability or prior use of.
- 534. Discretion of court.
- 535. Dismissal of part of action or as to some of parties.
- 536. Parties entitled to dismissal; parties entitled to oppose.
- 537. Estoppel or waiver of right.

2. GROUNDS IN GENERAL.

- 551. In general.
- 552. Vexatious or fictitious suit; mootness.
- 553. Error as to nature or form of remedy.
- 554. Want of jurisdiction.
- 555. Misjoinder of claims or defenses.
- 556. Parties, defects as to.
- 556.1. — In general.
- 557. — Capacity.
- 558. — Nonjoinder.
- 559. — Misjoinder.
- 560. Process, defects and objections as to.
- 561. Affirmative defenses, raising by motion to dismiss.
- 561.1. — In general.
- 562. — Particular defenses.
- 563. Disobedience to order of court or other misconduct.

3. WANT OF PROSECUTION.

- 581. Delay or failure to prosecute in general.
- 582. Obligation to prosecute; diligence.
- 583. Power and discretion of court in general.
- 584. Length of delay in general.
- 585. Limitations as to time for proceeding.
- 585.1. — In general.
- 586. — Limitations as mandatory or discretionary.
- 587. Particular applications, delay or time limitation.
- 588. Delay in filing note of issue or in noting action for trial.
- 589. Commencement of limitation period; time excluded.
- 590. Action taken or prosecution interrupting limitation period.
- 590.1. — In general.
- 591. — Filing note of issue or setting case for trial.
- 592. — Trial.
- 593. Effect of continuance or application therefor.
- 594. Excuses for delay.
- 594.1. — In general.
- 595. — Impossibility, impracticality, or futility of proceeding.
- 596. — Inadvertence or neglect; delay attributable to counsel.
- 597. — Delay caused by or consented to by opponent.

307A. PRETRIAL PROCEDURE**III. DISMISSAL.(Cont'd)**

- 598. — Absence or unavailability of party or witness.
- 599. — Compromise, settlement, or negotiations.
- 600. — Death or disability.
- 601. — Pendency of other proceedings.
- 602. Prejudice from delay.

4. PLEADING, DEFECTS IN, IN GENERAL.

- 621. Defects and objections ground for dismissal in general.
- 622. Insufficiency in general.
- 623. Clear and certain nature of insufficiency.
- 623.1. — In general.
- 624. — Availability of relief under any state of facts provable.
- 625. Pleading good in part.
- 626. Inconsistency, uncertainty, indefiniteness, or lack of particularity.
- 627. Counterclaims and cross-complaints.
- 628. Prayer for relief; allegations of damages.
- 629. Filing or service, defects in.

5. PARTICULAR ACTIONS OR SUBJECT MATTER, DEFECTS IN PLEADING.

- 641. Automobiles, aviation, railroads, and carriers.
- 642. Bills, notes, and bonds; mortgages, pledges, liens.
- 643. Contracts; sales.
- 644. Corporations and associations; bank and trust companies; securities.
- 645. Indemnity and contribution.
- 646. Insurance.
- 647. Labor and employment; injuries to employees.
- 648. Libel and slander.
- 649. Negligence, personal injuries, and death; products liability.
- 650. Property in general; deeds and leases; eminent domain.
- 651. Torts in general.
- 652. Other actions.

6. PROCEEDINGS AND EFFECT.

- 671. Nature and form of proceeding.
- 671.1. — In general.
- 672. — Relation to demurrer.
- 673. Time for motion; condition of cause.

III. DISMISSAL.(Cont'd)

- 674. Dismissal on court's own motion; automatic dismissal.
- 675. Motion and proceedings thereon.
- 676. Notice or demand.
- 677. Curing defects after motion.
- 678. Hearing and determination in general.
- 679. Construction of pleadings.
- 680. Fact questions.
- 681. Matters considered in general.
- 682. Evidence.
- 682.1. — In general.
- 683. — Presumptions and burden of proof.
- 684. — Sufficiency and effect.
- 685. Affidavits or other showing of merit.
- 686. Matters deemed admitted.
- 686.1. — In general.
- 687. — Well-pleaded facts.
- 688. — Particular admissions.
- 689. Matters not admitted.
- 690. Dismissal with or without prejudice.
- 691. Order in general.
- 692. Terms and conditions.
- 693. Operation and effect.
- 693.1. — In general.
- 694. — Adjudication on merits.
- 695. Amendment or pleading over.
- 696. Vacating or setting aside dismissal.
- 696.1. — In general.
- 697. — After dismissal for want of prosecution.
- 698. — Time for vacation.
- 699. — Proceedings.

IV. CONTINUANCE.

- 711. Nature and power to grant; statutes and court rules.
- 712. Right to continuance in general.
- 713. Discretion of court.
- 714. Grounds for continuance in general.
- 715. Absence, death, or disability of party.
- 716. Absence, death, or disability of counsel.
- 717. Absence of witness or evidence.
- 717.1. — In general.
- 718. — Diligence.
- 719. Surprise.
- 720. Amendment of pleadings or change of parties.
- 721. Want of preparation.

307A. PRETRIAL PROCEDURE**IV. CONTINUANCE.**(Cont'd)

- 722. Admissions to prevent continuance.
- 723. Motion and proceedings thereon.
- 723.1. — In general.
- 724. — Affidavits and evidence.
- 725. Determination and order.
- 726. Second or further continuance.

V. PRETRIAL CONFERENCE.

- 741. Nature and conduct in general.
- 742. Purpose and scope.
- 742.1. — In general.
- 743. — Simplification and elimination of issues.
- 744. — Evidence and witnesses; disclosure and exchange of information.
- 745. — Determination of issues; judgment; dismissal.
- 746. Failure to attend; sanctions.
- 747. Order and record or report.
- 747.1. — In general.
- 748. — Amendment or modification.
- 749. Effect.
- 749.1. — In general.
- 750. — Limitation of issues in general.
- 751. — Particular issues, elimination of.
- 752. — Admissibility of evidence.
- 753. — Competency of undisclosed witnesses.

308. PRINCIPAL AND AGENT**SUBJECTS INCLUDED**

- Relation of agency created by letters of attorney or other express appointment, or arising by implication
- Extent and exercise of the authority conferred and ratification of assumed authority
- Rights, powers, duties, and liabilities of the parties as between themselves and as to others incident to the relation
- Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate or public officers and agents, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PUBLIC EMPLOYMENT and topics relating to particular officers

Marital or parental relations, agency implied from or incident to, see MARRIAGE AND COHABITATION, PARENT AND CHILD

Particular vocations or occupations, agency involved in the exercise of, see ATTORNEYS AND LEGAL SERVICES, BROKERS, FACTORS, INSURANCE, and other specific topics

- I. THE RELATION, ¶1–46.
 - (A) CREATION AND EXISTENCE, ¶1–29.
 - (B) TERMINATION, ¶29.5–46.
- II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES, ¶47–90.
 - (A) EXECUTION OF AGENCY, ¶47–80.
 - (B) COMPENSATION OF AGENT, ¶81–89.
 - (C) LIEN OF AGENT, ¶90.
- III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS, ¶91–199.
 - (A) POWERS OF AGENT, ¶91–137.
 - (B) UNDISCLOSED AGENCY, ¶138–146.
 - (C) UNAUTHORIZED AND WRONGFUL ACTS, ¶147–162.
 - (D) RATIFICATION, ¶163–176.
 - (E) NOTICE TO AGENT, ¶177–182.
 - (F) ACTIONS, ¶183–199.

I. THE RELATION.**(A) CREATION AND EXISTENCE.**

- 1. Nature of the relation in general.
- 2. What law governs.
- 3. Agency distinguished from other relations.
 - (1). In general.
 - (2). Contractor.
 - (3). Loan.
 - (4). Tenancy.
 - (5). Trust.
- 4. Capacity to appoint agent.
- 5. Capacity to act as agent.
- 6. Disqualification of agent by interest.
- 7. Appointment of agent.

308. PRINCIPAL AND AGENT**I. THE RELATION.(Cont'd)**

8. — In general.
9. — Agreements for appointment.
10. — Letters or powers of attorney under seal.
 - (1). In general.
 - (2). Acknowledgment and record.
11. — Instruments in writing not under seal.
12. — Parol appointment or authority.
13. — Acceptance by agent.
14. Implied agency.
 - (1). In general.
 - (2). Conduct of parties in general.
 - (3). Transactions relating to loans and negotiable instruments.
 - (4). Possession of instruments.
15. Joint principals.
16. Joint agents.
17. Subagency.
18. Evidence of agency.
 - 18.1. — In general.
19. — Presumptions and burden of proof.
20. — Admissibility in general.
 - (1). In general.
 - (2). Course of dealing and other transactions.
21. — Testimony of agent.
22. — Declarations and acts of agent.
 - (1). In general.
 - (2). Admissibility as dependent on admission of other evidence.
 - (3). Effect of knowledge of principal.
23. — Weight and sufficiency.
 - (1). In general.
 - (2). Character of evidence necessary.
 - (3). Facts showing agency in general.
 - (4). Facts showing agency for purchase or sale of property.
 - (5). Sufficiency to support verdict or finding as to agency.
24. Questions for jury.
25. Estoppel to assert or deny agency.
 - (.5). In general.
 - (1). Estoppel as to principal.
 - (2). Estoppel as to agent.
 - (3). Estoppel as to third persons.
26. Scope and extent of agency.
- 26.5. Modification.

I. THE RELATION.(Cont'd)

27. Assignment of contracts of agency.
 28. Duration.
 29. Extension or renewal.
- (B) TERMINATION.**
- 29.5. In general.
 30. Expiration of term.
 31. Fulfillment of purpose.
 32. Revocation by principal.
 33. — In general.
 34. — Agency coupled with interest.
 35. — Agency conferred for consideration.
 36. — Acts constituting revocation in general.
 37. — Revocation of letters or powers of attorney.
 38. — Notice of revocation.
 39. — Time of taking effect.
 40. — Evidence of revocation.
 41. — Damages for revocation or breach of contract.
 - (1). In general.
 - (2). Termination of relationship.
 - (3). Actions for damages in general.
 - (4). Evidence.
 - (5). Questions for jury.
 - (6). Measure and amount of damages.
 42. Disability of principal.
 43. Death of principal.
 - (1). In general.
 - (2). Agency coupled with interest.
 - (3). Acts done in ignorance of principal's death.
 44. Renunciation by agent.
 45. Disqualification of agent.
 46. Death of agent.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.**(A) EXECUTION OF AGENCY.**

47. Duties of principal.
48. Nature of agent's obligation.
49. Authority conferred as between principal and agent.
50. — In general.
51. — Construction of letters or powers of attorney.
52. — Implied authority.

308. PRINCIPAL AND AGENT**II. MUTUAL RIGHTS, DUTIES,
AND LIABILITIES.(Cont'd)**

- 53. — Liability for exceeding authority.
- 54. Delegation or substitution.
- 55. Mode of executing authority.
- 56. — In general.
- 57. — Special directions of principal.
- 58. — Usage or course of business.
- 59. — Discretion of agent.
- 60. — Liability for improper execution.
- 61. Skill and care required.
 - (1). In general.
 - (2). Gratuitous agency.
- 62. Custody and care of principal's property.
 - (1). In general.
 - (2). Investments or loans.
 - (3). Insurance and taxes.
- 63. Sale or other disposition of principal's property and proceeds thereof.
 - (.5). In general.
 - (1). Authority and duty of agent in general.
 - (2). Price and terms of sale.
 - (3). Liability of agent for price in general.
 - (4). Liability of agent for notes taken on sales.
- 64. Collection of debts due principal.
 - (.5). In general.
 - (1). Authority, duty, and liability of agent in general.
 - (2). Medium of payment.
 - (3). Mode of remittance.
- 65. Deposits and payments for principal.
- 66. Keeping and rendering accounts.
- 67. Liability for interest.
- 68. Failure to act.
- 69. Individual interest of agent.
 - (1). In general.
 - (2). Duty of agent to account for profits of agency.
 - (3). Transactions between principal and agent in general.
 - (4). Agent to sell, selling to himself.
 - (5). Agent to purchase, buying from himself.
 - (6). Purchases by agent for himself.
 - (7). Acquisition of adverse right or title.

**II. MUTUAL RIGHTS, DUTIES,
AND LIABILITIES.(Cont'd)**

- (8). Transactions after termination of agency.
- 70. Acting for parties adversely interested.
- 71. Fraud.
- 72. Conversion or embezzlement.
- 73. Subagents.
- 74. Joint agents.
- 75. Repudiation or ratification of agent's acts.
- 76. Estoppel as between principal and agent.
 - (1). In general.
 - (2). Estoppel to urge illegality.
- 77. Indemnity to agent from liability to third persons.
- 77.5. Deposits by agent as security.
- 78. Actions for accounting.
 - (.5). In general.
 - (1). Rights of action, defenses, and conditions precedent.
 - (2). Nature and form of remedy.
 - (2.1). Time to sue, limitations and laches.
 - (2.5). Parties.
 - (3). Pleading.
 - (4). Presumptions and burden of proof.
 - (5). Admissibility of evidence.
 - (6). Weight and sufficiency of evidence.
 - (6.5). Questions for jury.
 - (7). Instructions.
 - (8). Judgment and measure of damages.
- 79. Actions for negligence or wrongful acts of agent.
 - (.5). In general.
 - (1). Rights of action and defenses.
 - (2). Conditions precedent.
 - (3). Remedies.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Trial in general.
 - (7). Questions for jury.
 - (8). Instructions.
 - (9). Judgment and measure of damages.

(B) COMPENSATION OF AGENT.

- 81. Right to compensation in general.

308. PRINCIPAL AND AGENT**II. MUTUAL RIGHTS, DUTIES,
AND LIABILITIES.(Cont'd)**

- (1). In general.
- (2). Right to compensation for particular services.
- (3). Damages in lieu of compensation.
- (4). Contract as to compensation.
- (5). Termination of agency.
- (6). Failure to account.
- (7). Compensation from both parties.
- 82. Amount of salary or commission.
- 83. Additional compensation.
- 84. Deductions and forfeitures.
- 85. Reimbursement of advances, expenses, and losses.
- 86. Agency executed in part.
- 87. Services after termination of agency.
- 88. Subagents.
- 89. Actions for compensation.
 - (.5). In general.
 - (1). Defenses in general.
 - (2). Set-off and counterclaim.
 - (3). Remedies.
 - (3.5). Venue.
 - (4). Time to sue.

See also LIMITATION OF ACTIONS.

- (4.5). Parties.
- (5). Pleading.
- (6). Presumptions and burden of proof.
- (7). Admissibility of evidence.
- (8). Weight and sufficiency of evidence.
- (9). Questions for jury.
- (10). Instructions.
- (11). Judgment.

(C) LIEN OF AGENT.

- 90. Lien.
 - (1). In general.
 - (2). Enforcement.

**III. RIGHTS AND LIABILITIES AS
TO THIRD PERSONS.****(A) POWERS OF AGENT.**

- 91. Representation of principal.
- 92. — In general.
 - (1). In general.
 - (2). Payment to authorized agent.

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (3). Execution of agency.
- 93. — General agency.
- 94. — Special agency.
- 95. Express authority.
- 96. — In general.
- 97. — Construction of letters or powers of attorney.
- 98. Implied and apparent authority.
- 99. — In general.
- 100. — Principal's property and business.
 - (.5). In general.
 - (1). Possession of property.
 - (2). Lease of property.
 - (3). Mortgage of property.
 - (4). Pledge of property.
 - (5). Easements and licenses.
 - (6). Transaction of business for principal in general.
 - (7). Forming partnership.
- 101. — Contracts in general.
 - (1). In general.
 - (2). Contracts with common carriers.
 - (3). Contracts with salesmen.
 - (4). Contracts for building and repairs.
 - (5). Contracts for light, heat, and power.
 - (6). Contracts for advertising.
- 102. — Contracts of employment.
 - (1). In general.
 - (2). Employment of attorney.
 - (3). Employment of physician or surgeon.
 - (4). Employment of nurse.
- 103. — Purchases, sales, and conveyances.
 - (.5). In general.
 - (1). Purchases in general.
 - (2). Existence of authority to purchase.
 - (3). Property which may be purchased.
 - (4). Purchase on credit.
 - (5). Release or modification of contract of purchase.
 - (6). Sales and conveyances in general.
 - (7). Existence of authority to sell or convey.
 - (8). Property which may be sold or conveyed.

308. PRINCIPAL AND AGENT

- III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)**
- (9). Acquiescence or approval of principal.
 - (10). Purpose and terms of and consideration for sale or conveyance.
 - (11). Sale on credit.
 - (12). Conditions in contract of sale.
 - (13). Exchange of property.
 - (14). Release or modification of contract.
 - 104. — Warranties.
 - (1). In general.
 - (2). Power to warrant.
 - 105. — Collection of debts due principal.
 - (1). In general.
 - (2). Authority to collect in general.
 - (3). Authority of agent making loan or investment or having possession of securities.
 - (4). Authority of sales agent.
 - (5). Authority to collect before maturity.
 - (6). Authority to collect instrument without possession in general.
 - (7). Authority to collect note without possession at place where it is payable.
 - (8). Authority to collect interest as authorizing collection of principal.
 - (9). Medium of payment in general.
 - (10). Payment of agent's indebtedness.
 - (11). Application of payment.
 - (12). Authority to credit or receipt for amount.
 - (13). Transfer of claim.
 - 106. — Deposits and payments.
 - 107. — Pledging principal's credit.
 - (.5). In general.
 - (1). Authority to pledge credit in general.
 - (2). Borrowing money.
 - 108. — Loans and securities.
 - (.5). In general.
 - (1). Loans to agent.
 - (2). Loans by agent.
 - (3). Authority to receive money.
 - 109. — Negotiable instruments.
 - (.5). In general.

- III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)**
- (1). Execution of notes.
 - (2). Execution of bills of exchange, drafts and checks.
 - (3). Acceptance of bills of exchange.
 - (4). Indorsement of negotiable instruments.
 - (5). Authority to take and transfer notes.
 - 110. — Guaranty and suretyship.
 - (.5). In general.
 - (1). Authority to make guaranty.
 - (2). Authority to make contract of suretyship.
 - 111. — Release.
 - (1). In general.
 - (2). Release of liens and securities.
 - 111.1. — Settlement.
 - 111.2. — Compromise.
 - 111.3. — Extension of time.
 - 112. — Submission to arbitration.
 - 113. — Conduct of litigation.
 - (1). In general.
 - (2). Foreclosure of mortgage.
 - 114. — Confession of judgment.
 - 115. — Representations.
 - (1). In general.
 - (2). As to property sold or leased.
 - 116. Undisclosed limitation of authority.
 - (1). In general.
 - (2). Limitation of power to warrant.
 - 117. Necessity of writing or seal to confer power.
 - (1). In general.
 - (3). Sealed instruments in general.
 - (4). Lease or mortgage.
 - (5). Suretyship.
 - 118. Evidence as to authority.
 - 118.1. — In general.
 - 119. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Sale and transfer of property in general.
 - (3). Lease.
 - (4). Contract of employment.
 - (5). Receiving payment.
 - (6). Guaranties and warranties.
 - (7). Compromise.

308. PRINCIPAL AND AGENT**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- 120. — Admissibility in general.
 - (1). In general.
 - (2). Parol evidence.
 - (3). Letters.
 - (4). Evidence of conversations.
 - (5). Declarations of principal.
 - (6). Evidence of other and similar transactions by agent.
 - (7). Recognition of authority.
- 121. — Testimony of agent.
- 122. — Declarations and acts of agent.
 - (5). In general.
 - (1). Declarations and acts in general.
 - (2). Declarations accompanying acts.
 - (3). Declarations of deceased agent.
- 123. — Weight and sufficiency.
 - (1). In general.
 - (2). Testimony of agent.
 - (3). Sufficiency to support verdict or finding.
 - (4). Evidence of other and similar transactions.
 - (5). Declarations of principal.
 - (6). Declarations, representations, and acts of agents.
 - (7). Authority to sell, purchase, or exchange.
 - (8). Authority to make contracts of employment.
 - (9). Authority to make or indorse negotiable instruments.
 - (10). Authority to receive payment.
 - (11). Authority as to lease of property.
 - (12). Authority to make contracts of suretyship.
- 124. Questions for jury.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Purchase or sale and collection of debts.
- 125. Acting in principal's name.
- 125.1. — In general.
- 126. — Execution of written instruments.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Negotiable instruments.
 - (4). Deeds.
 - (5). Leases.

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (6). Reference to power.
 - 127. Rights acquired.
 - 127.1. — In general.
 - 128. — Agent's acts in general.
 - 129. — Agent's contracts.
 - 130. Liabilities incurred.
 - 130.1. — In general.
 - 131. — Agent's acts in general.
 - 132. — Agent's contracts.
 - (1). In general.
 - (2). Conduct of business in agent's name.
 - 133. — Credit given to agent.
 - 134. — Agent for both parties.
 - 135. — Agent of foreign principal.
 - 136. — Liabilities of agent.
 - (1). In general.
 - (2). Contracts in name of or for benefit of principal.
 - (3). Contracts in name of agent.
 - (4). Payments to or by agent.
 - (5). Credit given to agent.
 - (6). Absent, foreign, or nonexistent principal.
 - 137. Estoppel to deny authority.
 - (1). In general.
 - (2). Estoppel by representations.
- (B) UNDISCLOSED AGENCY.**
- 138. Duty to disclose agency.
 - 139. Acting in agent's name.
 - 139.1. — In general.
 - 140. — Effect in general.
 - 141. — Execution of written instruments.
 - 142. Constructive notice and facts putting third persons on inquiry.
 - 143. Rights of undisclosed principal.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Contracts of sale or purchase.
 - (4). Contracts for transportation.
 - (5). Rights and equities of third person against agent.
 - (6). Payment to agent.
 - 144. Rights of agent of undisclosed principal.
 - 145. Liabilities of undisclosed principal.
 - (1). In general.

308. PRINCIPAL AND AGENT**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (2). Agents' contracts in general.
- (3). Contracts of purchase or sale.
- (4). Election to hold principal or agent.
- 146. Liabilities of agent of undisclosed principal.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Contracts of purchase or sale.
- (C) UNAUTHORIZED AND WRONGFUL ACTS.**
- 147. Duty to disclose or ascertain authority.
 - (.5). In general.
 - (1). Duty to disclose authority.
 - (2). Duty to ascertain authority in general.
 - (3). Special agency.
 - (4). Payment to agent.
- 148. Knowledge or notice of extent of authority.
 - (1). In general.
 - (2). Constructive notice and facts putting third persons on inquiry.
 - (3). Evidence of extent of authority and knowledge or notice thereof.
 - (4). Effect of knowledge or notice.
 - (5). Effect of want of notice.
- 149. Unauthorized assumption of agency.
 - (.5). In general.
 - (1). Liabilities of principal.
 - (2). Liabilities of agent.
 - (3). Rights of third persons.
- 150. Effect of exceeding authority in general.
 - (1). In general.
 - (2). Rights and liabilities of principal.
 - (3). Liabilities of agent.
- 151. Acting after termination of authority.
 - (1). In general.
 - (2). Dealing with agent with knowledge of termination of authority.
 - (3). Dealing with agent without knowledge of termination.
 - (4). Estoppel of principal to deny liability.
- 152. Unauthorized dealings with principal's property.

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (1). In general.
- (2). Pledge of property.
- (3). Lease of property.
- (4). Sale and conveyance of property.
- 153. Payments by agent.
- 154. Payments to agent.
 - (1). In general.
 - (2). Liabilities of agent.
- 155. Unauthorized contracts of agent.
 - (.5). In general.
 - (1). Rights and liabilities of principal in general.
 - (2). Contracts in writing.
 - (3). Purchase of property.
 - (4). Liabilities of agent.
- 156. Representations of agent.
- 157. Acting for parties adversely interested.
- 158. Fraud of agent.
- 159. Negligence or wrongful acts of agent.
 - (.5). In general.
 - (1). Rights and liabilities of principal.
 - (2). Liabilities of agent.
- 160. Negligence or wrongful acts of agent's employees.
- 160.5. Individual interest of agent.
- 161. Repudiation by principal.
 - (.5). In general.
 - (1). Necessity for repudiation.
 - (2). Right to repudiate.
 - (3). Time for repudiation.
 - (4). Mode and form of repudiation.
 - (5). Retention of benefits or other adoption of act.
 - (6). Operation and effect of repudiation.
- 162. Torts by third persons.
- (D) RATIFICATION.**
- 163. Nature and grounds in general.
 - (1). In general.
 - (2). Necessity of new consideration.
 - (3). Power of agent to ratify his own acts or acts of subagent.
- 164. Acts capable of ratification.
 - (1). In general.
 - (2). Wrongful acts.
- 165. Capacity of principal.

308. PRINCIPAL AND AGENT**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- 166. Knowledge of facts.
 - (1). In general.
 - (2). Particular contracts or transactions.
 - (2.1). — In general.
 - (3). — Contracts of sale or exchange.
 - (4). — Representations and warranties.
 - (5). — Purchases on credit.
 - (6). Evidence of knowledge.
- 167. Express ratification.
- 168. Implied ratification.
- 169. — In general.
 - (1). In general.
 - (2). Acts constituting ratification in general.
 - (3). Acts not amounting to ratification.
- 170. — Acquiescence.
 - (1). In general.
 - (2). Approval or recognition of agent's acts or contracts.
 - (3). Failure to repudiate agent's acts or delay in repudiating.
 - (4). Retaining agent in employment.
 - (5). Proceedings against agent.
- 171. — Acceptance of benefits.
 - (1). In general.
 - (2). Negotiable instruments and loans.
 - (3). Leases.
 - (4). Representations and warranties.
 - (5). Property acquired or purchased by agent.
 - (6). Collections, compromises, and settlements.
 - (7). Sale or transfer of property.
 - (8). Services.
 - (9). Suit for benefits or attempt to enforce contract.
- 172. Ratification in part.
- 173. Evidence of ratification.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 174. Questions for jury.
- 175. Operation and effect.

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (1). In general.
- (2). Agent's contracts.
- (3). Retroactive operation and intervening rights.
- 176. Retraction.
 - (E) NOTICE TO AGENT.
- 177. Imputation to principal in general.
 - (1). In general.
 - (2). Agent's acts or agreements.
 - (3). Notice of particular facts.
 - (3.1). — In general.
 - (4). — Of condition of property and facts affecting value in general.
 - (5). — Of usury.
 - (6). — Of facts affecting title.
- 178. Scope of agency or authority.
 - (1). In general.
 - (2). Employees or messengers.
 - (3). Agent of state.
 - (4). Salesmen.
- 179. Time of notice to agent.
 - (.5). In general.
 - (1). Knowledge acquired during agency.
 - (2). Knowledge acquired previous to agency.
 - (3). Knowledge acquired after termination of agency or business.
- 180. Adverse interest of agent.
- 181. Collusion or fraud of agent.
- 182. Evidence of knowledge.
 - (F) ACTIONS.
- 183. Rights of action by principal or agent, or both.
 - (.5). In general.
 - (1). Actions by or in the name of principal or agent in general.
 - (2). Actions by or in the name of principal or agent on agent's contracts.
 - (3). Actions for fraud practiced on agent.
 - (4). Actions on lease.
 - (5). Conditions precedent.

308. PRINCIPAL AND AGENT**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.**(Cont'd)

- 184. Rights of action against principal or agent or both.
 - (.5). In general.
 - (1). Rights and remedies in general.
 - (2). Election of remedies.
- 185. Defenses against principal or agent.
- 186. Defenses by principal or agent.
- 187. Jurisdiction and venue.
- 188. Parties.
- 189. Pleading.
 - (.5). In general.
 - (1). Complaint.
 - (2). Answer in general.
 - (3). Affidavit of defense.
 - (3.5). Reply and subsequent pleadings.
 - (4). Issues, proof, and variance.
- 190. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 191. Trial.
- 191.1. — In general.
- 193. — Questions for jury.
- 194. — Instructions.
 - (1). In general.
 - (2). As to agent's authority.
 - (3). As to ratification.
 - (4). As to agent's individual liability.
 - (5). As to notice to agent.
- 195. — Verdict and findings.
- 197. Judgment and enforcement thereof.
- 199. Costs.

309. PRINCIPAL AND SURETY**SUBJECTS INCLUDED**

Promises to be bound, with and for another primarily liable, for the payment of a debt or performance of a duty or contract or other obligation by him

Nature, requisites, validity, incidents, construction, operation and effect of such promises in general

Organization, franchises, powers, and dealings of surety companies

Rights, liabilities, and remedies of sureties, principals, and creditors

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Collateral promises of—

Guaranty, see GUARANTY

Indemnity, see INDEMNITY

Liabilities of sureties for performance of—

Particular acts in judicial proceedings, see ARREST, CREDITORS' REMEDIES, INJUNCTION, REPLEVIN, APPEAL AND ERROR, COSTS, and other specific topics

Particular classes of fiduciary or official duties, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, TRUSTS, PUBLIC EMPLOYMENT and topics relating to specific officers

Particular classes of persons, contracts of suretyship by, see INFANTS, MENTAL HEALTH, and other specific topics—

Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Partners, see PARTNERSHIP

Particular forms of contracts or instruments of suretyship, see BONDS, BAIL, UNDERTAKINGS

I. CREATION AND EXISTENCE OF RELATION, ¶1–58.

(A) BETWEEN INDIVIDUALS, ¶1–51.

(B) SURETY COMPANIES, ¶52–58.

II. NATURE AND EXTENT OF LIABILITY OF SURETY, ¶59–87.**III. DISCHARGE OF SURETY, ¶88–131.****IV. REMEDIES OF CREDITORS, ¶132–166.****V. RIGHTS AND REMEDIES OF SURETY, ¶167–200.**

(A) AS TO CREDITOR, ¶167–172.

(B) AS TO PRINCIPAL, ¶173–190.5.

(C) AS TO CO-SURETY, ¶191–200.

309. PRINCIPAL AND SURETY**I. CREATION AND EXISTENCE OF RELATION.****(A) BETWEEN INDIVIDUALS.**

1. Nature of the relation.
2. What law governs.
3. Statutory provisions.
4. Suretyship distinguished from other contracts.
5. — In general.
6. — Guaranty.
7. Validity of obligation of principal.
8. Capacity of parties.
9. Creation of relation in general.
10. Express contracts.
11. Implied contracts.
12. — In general.
13. — Execution of joint obligation.
14. — Assumption of debt of another.
15. — Mortgage or pledge to secure debt of another.
16. Change from principal debtor to surety.
- 16.5. Change from surety to principal debtor.
17. Notice to creditor of relation.
18. Execution of written instruments.
19. — In general.
20. — By principal.
21. — By surety.
22. — By cosureties.
23. — Conditional signature.
 - (1). In general.
 - (2). Notice of condition.
24. — Instruments under seal.
25. Delivery of written instruments.
26. — In general.
27. — Conditional delivery.
28. — Acceptance and notice thereof.
29. Incomplete instruments.
30. Consideration.
- 30.1. — In general.
31. — Necessity.
32. — Effect of seal.
33. — Sufficiency in general.
34. — Executed consideration to principal.
35. — Forbearance to principal.
36. — Want of consideration.
37. — Failure of consideration.
38. Validity of assent in general.
39. Mistake or misrepresentation.
40. Fraud.
41. — In general.

I. CREATION AND EXISTENCE OF RELATION.(Cont'd)

42. — Concealment.
43. Duress and undue influence.
44. Illegality.
45. Evidence of existence of relation.
46. Estoppel or waiver as to defects or objections.
47. Ratification.
48. Effect of invalidity.
49. Cancellation for invalidity.
50. Modification.
51. Duration and termination of relation in general.

(B) SURETY COMPANIES.

52. Control and regulation in general.
53. Statutory provisions.
54. Incorporation and organization.
55. Officers and agents.
56. Corporate powers and functions.
57. Execution and delivery of bonds or other obligations.
58. Foreign companies.

II. NATURE AND EXTENT OF LIABILITY OF SURETY.

59. General rules of construction.
60. What law governs.
61. Parties liable as sureties.
- 61.1. — In general.
62. — Joint or several.
63. Subject-matter in general.
64. Transfer of subject-matter and security.
65. Nature of liability.
66. Scope and extent of liability in general.
 - (1). In general.
 - (2). Liability of principal as measure of liability of surety.
67. Commencement and duration of liability.
68. Term or period covered.
69. — In general.
70. — Pre-existing liabilities or defaults.
71. — Successive terms or periods.
72. Limitation as to amount.
73. Interest, costs, attorney fees, and damages.
74. Conditions of liability.
75. Performance of contract or conditions by creditor.

309. PRINCIPAL AND SURETY**II. NATURE AND EXTENT OF LIABILITY OF SURETY.(Cont'd)**

- 76. Breach or fulfillment of condition by principal in general.
- 77. Debt secured and payment thereof by principal.
- 78. Property or funds covered, disposition thereof, and accounting by principal.
- 79. Duties of office or employment, and performance thereof by principal.
- 80. Performance of contract by principal.
- 81. — In general.
- 82. — Building contracts.
 - (1). In general.
 - (2). Extent of liability.
- 83. Estoppel to assert or deny liability.
- 86. Acts requisite to fix liability.
- 87. Time of accrual of liability.

III. DISCHARGE OF SURETY.

- 88. Provisions of contract of suretyship in general.
- 89. Subsequent release or agreement.
- 90. Operation of law in general.
- 91. Death of principal.
- 92. Death of surety.
- 93. Diversion of instrument to unauthorized purpose.
 - (1). In general.
- 94. — In general.
- 95. — Negotiable instruments.
- 96. Change in obligation or duty of principal.
- 97. — In general.
- 98. — Duties of office or employment.
- 99. — Provisions of contracts in general.
- 100. — Provisions of building contracts.
 - (1). In general.
 - (2). Change in terms of payment.
 - (3). Change in plans and specifications in general.
 - (4). Provisions as to change in plans.
 - (5). Change in kind or quality of materials.
 - (6). Additional work.
- 101. Alteration of instrument.
 - (1). In general.
 - (2). Materiality of alteration in general.
 - (3). As to names of sureties or obligors.

III. DISCHARGE OF SURETY.(Cont'd)

- (4). As to nature or amount of obligation or penalty.
- (5). As to date of instrument and time and place of performance.
- (6). As to interest on obligation.
- 102. Change in parties to obligation secured.
- 103. Extension of time for payment or other performance.
- 104. — In general.
 - (1). In general.
 - (2). Mortgage or pledge to secure debt of another.
 - (3). Performance of contract in general.
 - (4). Effect of indemnity to surety.
 - (5). Notice to creditor of relation.
- 105. — Requisites and validity of agreement in general.
 - (1). In general.
 - (2). Person granting extension.
 - (3). Taking new or additional obligation.
 - (4). Extension after maturity of obligation.
- 106. — Agreement for definite time.
- 107. — Duration of extension.
- 108. — Consideration.
 - (5). In general.
 - (1). Necessity in general.
 - (2). Sufficiency of consideration in general.
 - (3). Payment of interest.
 - (4). Payment of usurious interest.
 - (5). Part payment of principal.
- 109. Taking additional or substituted security.
- 110. Judgment and execution against principal.
- 111. Payment or other satisfaction by principal.
 - (1). In general.
- 112. — Application of payments.
- 114. Misapplication of funds or securities by creditor.
- 115. Release or loss of other securities.
 - (1). In general.
 - (2). Acts constituting release or loss of securities in general.
- 116. Release of cosurety.
- 117. Unauthorized payment to principal.

309. PRINCIPAL AND SURETY**III. DISCHARGE OF SURETY.(Cont'd)**

- 118. Discharge of principal without payment or satisfaction.
- 119. Rescission of contract of principal.
- 120. Notice by surety to terminate liability after default of principal.
- 121. Negligence of creditor in general.
- 122. Failure to terminate employment or contract after default.
- 123. Neglect to give notice to surety of default.
 - (1). In general.
 - (2). Sufficiency of notice.
 - (3). Effect of omission or delay.
- 124. Neglect to act or proceed against principal.
- 125. — In general.
- 126. — Notice by surety.
 - (.5). In general.
 - (1). Necessity and effect of notice.
 - (2). Time for giving notice.
 - (3). Form and sufficiency of notice.
 - (4). Service of notice.
 - (5). Compliance with notice.
 - (6). Effect of noncompliance with notice.
- 127. Reservation by creditor of rights against surety in transactions with principal.
- 128. Consent by surety to transactions between creditor and principal.
 - (1). In general.
 - (2). Extension of time of payment or other performance.
- 129. Waiver or estoppel of surety.
 - (1). In general.
 - (2). Change in contract or obligation.
 - (3). Alteration of instrument.
 - (4). Extension of time of payment or other performance.
 - (5). Unauthorized payment to principal.
- 130. New promise after release.
- 131. Payment or other satisfaction by surety.

IV. REMEDIES OF CREDITORS.

- 132. Nature and form.
- 133. Rights of action against principal.
- 134. Defenses by principal.
- 135. Defense by surety of action against principal.

IV. REMEDIES OF CREDITORS.(Cont'd)

- 136. Rights of action against surety.
- 137. Conditions precedent to action against surety.
- 138. — In general.
- 139. — Notice and demand.
- 140. — Determination as to default and liability of principal.
- 141. Defenses by surety.
- 142. — In general.
- 143. — Defenses of principal available to surety.
- 144. — Set-off or counterclaim of principal.
- 145. Conclusiveness of former adjudication in action against principal or surety.
 - (1). In general.
 - (2). Where surety is party to or has notice of suit.
 - (3). Judgment by default.
- 146. Remedies against estate of deceased surety.
- 147. Recourse to indemnity to surety.
 - (1). In general.
 - (2). Nature and terms of indemnity contract.
 - (3). Nature and validity of obligation of principal.
 - (4). Notice to or privity of creditor.
 - (5). Assignment, release, or other disposition of collateral by surety.
 - (6). Effect of partial or entire payment.
 - (7). Determination or accrual of liability of principal or surety.
 - (8). Insolvency of principal or surety.
 - (9). Rights and remedies of creditors for enforcement of right.
 - (10). Indemnity from third person.
- 148. Jurisdiction and venue.
- 149. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 150. Parties.
- 151. — In general.
- 152. — Joinder of defendants.
- 153. Process and appearance.
- 154. Pleading.
- 154.1. — In general.
- 155. — Declaration, complaint, or petition.

309. PRINCIPAL AND SURETY**IV. REMEDIES OF CREDITORS.(Cont'd)**

- 156. — Plea or answer and subsequent pleadings.
- 157. — Issues, proof, and variance.
- 158. Evidence.
- 158.1. — In general.
- 159. — Presumptions and burden of proof.
- 160. — Admissibility.
- 161. — Weight and sufficiency.
- 162. Trial.
 - (1). In general.
 - (2). Questions for jury.
 - (3). Instructions.
 - (4). Verdict and findings.
- 163. Judgment.
- 164. Execution.
- 165. Appeal and error.
- 166. Costs.

V. RIGHTS AND REMEDIES OF SURETY.**(A) AS TO CREDITOR.**

- 167. Rights of sureties in general.
- 168. Recourse to and exhaustion of remedy against principal.
- 169. Recourse to and exhaustion of other securities.
- 170. Contribution between surety and creditor.
- 171. Recovery of payments to creditor.
- 172. Actions against creditor.

(B) AS TO PRINCIPAL.

- 173. Right of recourse to principal, in general.
- 174. Duty to indemnify surety.
- 175. Contracts and conveyances for indemnity.
- 176. Rights of surety before payment or satisfaction of debt or liability.
- 177. — In general.
- 178. — Accrual of liability as surety.
- 179. — Enforcement of payment by principal or other exoneration.
- 180. — Recourse to indemnity from principal.
- 181. Rights of surety after payment or satisfaction by him of debt or liability.
- 182. — In general.

V. RIGHTS AND REMEDIES OF SURETY.(Cont'd)

- 183. — Necessity of payment or satisfaction.
- 184. — Sufficiency of payment or satisfaction.
- 185. — Indemnity or reimbursement.
- 185.5. Rights of surety against estate of deceased principal.
- 186. Rights of surety as against principal's creditors.
- 187. Conclusiveness as against principal of adjudication against surety.
- 188. Enforcement against principal of execution against surety.
- 189. Summary remedies against principal.
- 190. Actions against principal.
 - (.5). In general.
 - (1). Rights of action, and nature and form of remedy.
 - (2). Conditions precedent.
 - (3). Defenses.
 - (4). Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - (5). Parties.
 - (6). Pleadings.
 - (7). Evidence.
 - (8). Amount or extent of recovery.
 - (9). Trial.
 - (10). Judgment.
- 190.5. Return or recovery of deposit or security to indemnify surety.

(C) AS TO CO-SURETY.

- 191. Relation between cosureties.
- 192. Obligations constituting parties cosureties.
- 193. Recourse to indemnity to cosurety from principal.
- 194. Right to contribution in general.
 - (1). In general.
 - (2). Loss or waiver of right in general.
 - (3). Release or insolvency of principal.
 - (4). Agreement between cosureties.
 - (5). Effect of indemnity from principal.
 - (6). Liability of estate of deceased cosurety.
 - (6.5). Necessity of payment or satisfaction.

310. PRISONS**V. RIGHTS AND REMEDIES
OF SURETY.(Cont'd)**

- (7). Mode and sufficiency of payment.
195. Discharge of cosurety as affecting liability to contribution.
196. Measure of contribution.
197. Conclusiveness as between cosureties of adjudication against principal or surety.
198. Enforcement against cosurety of judgment or execution against surety.
199. Summary remedies between cosureties.
200. Actions between cosureties.
- (.5). In general.
- (1). Nature and form of remedy.
- (2). Grounds of action and conditions precedent.
- (3). Defenses.
- (4). Time to sue and limitations.
- See also LIMITATION OF ACTIONS.*
- (5). Parties.
- (6). Pleading.
- (7). Evidence.
- (8). Trial.
- (9). Judgment.

310. PRISONS**SUBJECTS INCLUDED**

Public buildings for confinement of persons held in judicial custody, in either civil or criminal proceedings, and either to secure their production as parties or witnesses in further proceedings, or as punishment by imprisonment, with or without hard labor, whether such buildings be designated as prisons or as jails, penitentiaries, houses of correction, or otherwise

Establishment, maintenance, regulation, and management of such places

Disabilities and other consequences resulting from status as prisoner

Rights of prisoners

Care, custody, confinement, control, and maintenance of prisoners

Labor of prisoners and convicts and disposition of the products thereof

Proceedings, actions, and litigation involving prisoners

Prison records

Rights of prison visitors and other third parties, and protection of such persons from harm

Rights, powers, duties, and liabilities of wardens, jailers, keepers, and other officers and employees

Costs of incarceration

Offenses by prisoners, inmates, or other detainees

Offenses by nonprisoners in connection with prisons

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Aliens, detention and incarceration of, see **ALIENS, IMMIGRATION, AND CITIZENSHIP VI(D)**

Arrest and discharge from arrest, jail limits, prison bounds, poor debtors, etc., see **ARREST, BAIL, CREDITORS' REMEDIES**

Civil rights and antidiscrimination statutes, protection of prisoners under, see **CIVIL RIGHTS**

Constitutional rights of prisoners, see also **CONSTITUTIONAL LAW** and **SENTENCING AND PUNISHMENT VII**

Costs of civil litigation by prisoners, indigence, and proceedings in forma pauperis, see **COSTS VI, FEDERAL CIVIL PROCEDURE** ¶2734

Costs of criminal prosecutions, see **COSTS XIV**

Criminal records, see **CRIMINAL LAW XXVIII**

Cruel and unusual punishment, see also **SENTENCING AND PUNISHMENT VII**

Disabilities and other consequences resulting from status as convict, see **CONVICTS**

Escape as criminal offense, see **ESCAPE**

Insane or mentally ill prisoners, commitment and subsequent confinement, see **MENTAL HEALTH**

Juvenile offenders, agencies and institutions for correction or rehabilitation, see **INFANTS XVII**

310. PRISONS

Military justice, incarceration in connection with, see MILITARY JUSTICE ¶938, 1328

Pardon, clemency, amnesty, reprieve, and commutation, see PARDON AND PAROLE

Parole, see PARDON AND PAROLE

Probation, see SENTENCING AND PUNISHMENT IX

Reformatory institutions, see INFANTS XVII

Sentencing proceedings and punishment imposed, see SENTENCING AND PUNISHMENT

I. IN GENERAL, ¶100–109.

II. PRISONERS AND INMATES, ¶110–349.

(A) IN GENERAL, ¶110–119.

(B) CARE, CUSTODY, CONFINEMENT, AND CONTROL, ¶120–169.

(C) LABOR AND EMPLOYMENT, ¶170–189.

(D) HEALTH AND MEDICAL CARE, ¶190–209.

(E) PLACE OR MODE OF CONFINEMENT, ¶210–239.

(F) DURATION OF CONFINEMENT, ¶240–259.

(G) ACCESS TO COURTS AND PUBLIC OFFICIALS, ¶260–269.

(H) PROCEEDINGS, ¶270–339.

(I) RECORDS, ¶340–349.

III. PRETRIAL DETENTION, ¶350–379.

IV. NONPRISONERS, ¶380–389.

V. OFFICERS AND EMPLOYEES, ¶390–409.

VI. COSTS OF INCARCERATION, ¶410–429.

VII. OFFENSES, ¶430–440.

I. IN GENERAL.

100. In general.
101. Establishment and maintenance.
102. Management and operation.
103. — In general.
104. — Proceedings.
105. Judicial supervision, intervention, or review.

II. PRISONERS AND INMATES.

(A) IN GENERAL.

110. In general.

II. PRISONERS AND INMATES.(Cont'd)

111. Status, rights, and disabilities in general.
112. Regulation and supervision in general; role of courts.
113. Particular rights and disabilities.
114. Contracts.
115. Property and conveyances.
116. — In general.
117. — Money and finances; inmate accounts.

(B) CARE, CUSTODY, CONFINEMENT, AND CONTROL.

120. In general.
121. Discipline, security, and safety in general.
122. Retaliation in general.
123. Particular violations, punishments, deprivations, and conditions.
124. Use of force.
125. Sexual conduct.
126. Protection from violence, assault, or abuse.
127. Shackles or other restraints.
128. Association in general; prisoner organizations.
129. Expression, communications, and censorship in general.
130. Privacy in general.
131. Threats, intimidation, and harassment; abusive language.
132. Personal property and effects; contraband.
133. Purchases; commissaries.
134. Search, seizure, and confiscation.
135. — In general.
136. — Particular issues and applications.
137. — Strip searches.
138. — Samples and tests.
139. — Disposition of seized material.
140. Reading and writing material; libraries.
Law books, law libraries, and legal materials, see ¶265.
141. Visitors.
142. — In general.
143. — Contact and conjugal visits.
144. Mail and correspondence.
145. — In general.
146. — Incoming.
147. — Outgoing.

310. PRISONS**II. PRISONERS AND INMATES.(Cont'd)**

- 148. — Internal; inmate-to-inmate.
- 149. Telephones.
- 150. Computers; e-mail.
- 151. Religious practices and materials.
- 152. — In general.
- 153. — Hair, grooming, and clothing.
- 154. — Diet and meals.
- 155. — Services, ceremonies, texts, study, and prayer.
- 156. Hazardous and unhealthful conditions; housing.
- 157. Food and drink.
- 158. Clothing and grooming; bedding and sleeping conditions.
- 159. Recreation and exercise.
- 160. Tobacco.
- 161. Television, motion pictures, and videos; personal electronics.
- 162. Rehabilitation and reformation.
- 163. Education and training.

(C) LABOR AND EMPLOYMENT.

- 170. In general.
- 171. Working conditions.
- 172. Wages or earnings.
- 173. Work assignments; termination.
- 174. Work release.
- 175. Contracts for labor.
- 176. — In general.
- 177. — Validity.
- 178. — Construction and operation.
- 179. — Duration and termination.
- 180. — Actions on contracts.
- 181. — Rights of convict or prisoner.
- 182. Bonds.
- 183. Disposition of products of labor.

(D) HEALTH AND MEDICAL CARE.

- 190. In general.
- 191. Particular conditions and treatments.
- 192. — In general.
- 193. — Dental conditions and treatment.
- 194. — Psychological conditions and treatment.
- 195. Self-harm in general.
- 196. Voluntariness; right to refuse treatment.
- 197. — In general.
- 198. — Psychological treatment.

II. PRISONERS AND INMATES.(Cont'd)

- 199. — Food and drink.
- 200. Suicide.
- 201. Drug and alcohol treatment.
- 202. Sex-offender treatment.
- 203. Reproductive issues.
- 204. Transsexuals; sex-change operations.

(E) PLACE OR MODE OF CONFINEMENT.

- 210. In general.
- 211. Regulation and supervision in general; role of courts.
- 212. Nature or location of facility.
- 213. — In general.
- 214. — Inter-system issues.
- 215. Nature of offense, offender, or sentence.
- 216. — In general.
- 217. — Race.
- 218. — Sex.
- 219. — Sexual orientation or identity.
- 220. — Disability or illness.
- 221. — Mental disability or illness.
- 222. — Sex offenses and offenders.
- 223. Classification; security status.
- 224. Transfer.
- 225. — In general.
- 226. — International transfer.
- 227. — Interstate and state-federal transfer.
- 228. Housing assignments and units; transfer within facility.
- 229. Punitive, disciplinary, or administrative confinement.
- 230. — In general.
- 231. — Segregation.
- 232. — Solitary confinement; isolation.
- 233. — Confinement to cell; lockdown and keeplock.
- 234. Duty to protect; protective confinement.
- 235. Shock incarceration; boot camps.
- 236. Private facilities or management.

(F) DURATION OF CONFINEMENT.

- 240. In general.
- 241. Discharge and release in general.
- 242. Reduction of term in general.
- 243. Good conduct or other earned credits against sentence.
- 244. — In general.

310. PRISONS**II. PRISONERS AND INMATES.(Cont'd)**

- 245. — Right to credits; eligibility and entitlement.
 - (1). In general.
 - (2). Discretion in general.
 - (3). Particular issues and applications.
 - (4). Participation in treatment programs.
- 246. — Amount and computation of credits.
- 247. — Loss and restoration of credits.
- 248. Conditional release; community placement.
- 249. Temporary release; furlough.
- 250. Escape.
- 251. — In general.
- 252. — Effect on duration of confinement; good-time credits.

(G) ACCESS TO COURTS AND PUBLIC OFFICIALS.

- 260. In general.
- 261. Legal assistance; right to counsel.
- 262. — In general.
- 263. — Attorney substitutes.
- 264. Communication with courts, officers, or counsel.
- 265. Law books, law libraries, and legal materials.
- 266. Right to provide assistance; opportunity for legal work.
- 267. — In general.
- 268. — Self-representation.

(H) PROCEEDINGS.

- 270. In general.
- 271. Nature and necessity of proceedings; right to notice and hearing.
- 272. — In general.
- 273. — Grievances.
- 274. — Discipline and misconduct.
- 275. — Placement and classification.
- 276. — Transfer.
- 277. — Duration of confinement and good-time credits.
- 278. — Other particular proceedings.
- 279. Requisites, course, and conduct of proceedings.
- 280. — In general.
- 281. — Particular issues and applications.
- 282. — Composition of tribunal; bias.

II. PRISONERS AND INMATES.(Cont'd)

- 283. — Time for proceedings; prior notice and hearing.
- 284. — Contents and adequacy of notice, petition, or other pleading.
- 285. — Disclosure and discovery.
- 286. — Presence or attendance.
- 287. — Counsel or other assistance.
- 288. — Interpreters.
- 289. — Evidence and witnesses.
 - (1). In general.
 - (2). Statements, confessions, and admissions; self-incrimination.
 - (3). Right to present evidence and witnesses.
 - (4). Cross-examination and confrontation.
- 290. — Presumptions, inferences, and burden of proof.
- 291. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Grievances.
 - (3). Discipline and misconduct.
 - (4). Placement and classification.
 - (5). Transfer.
 - (6). Duration of confinement and good-time credits.
 - (7). Other particular issues.
- 292. — Determination and disposition; statement of reasons.
- 293. Internal or administrative review.
- 294. Judicial review.
- 295. — In general.
- 296. — Right to intervention or review; jurisdiction.
- 297. — Persons entitled to seek intervention or review; standing; parties.
- 298. — Preservation of error; record; waiver and estoppel.
- 299. — Mootness.
- 300. — Time for proceedings.
- 301. — Scope or standard of review.
- 302. — Harmless error.
- 303. — Course and conduct of proceedings.
- 304. — Determination and disposition.
- 305. — Further review.
- 306. — Costs and fees.
- 307. Actions and litigation.

310. PRISONS**II. PRISONERS AND INMATES.(Cont'd)**

- 308. — In general.
- 309. — Right of action; restrictions.
- 310. — Presence or appearance.
- 311. — Pleading.
- 312. — Evidence.
- 313. — Trial.
- 314. — Judgment and relief.
- 315. Existence of other remedies; exclusivity.
- 316. Exhaustion of other remedies.
- 317. — In general.
- 318. — Particular cases.
- 319. — Time.
- 320. — Pleading.
- 321. — Evidence.
- 322. Abuse of proceedings; false or wrongful claims.
- 323. — In general.
- 324. — Frivolous claims; screening.
- 325. — Wrongful proceedings against prisoners; false misconduct reports.
- 326. Rulemaking and rulemaking proceedings.
- 327. — In general.
- 328. — Dissemination of rules, regulations, and policies.
- 329. — Judicial review.

(I) RECORDS.

Criminal records, see CRIMINAL LAW §1226.
General statutory disclosure requirements, see RECORDS II(B).

- 340. In general.
- 341. Amendment and expungement.
- 342. Medical records; confidentiality.

III. PRETRIAL DETENTION.

- 350. In general.
- 351. Care, custody, confinement, and control.
- 352. — In general.
- 353. — Particular violations, punishments, deprivations, and conditions.
- 354. — Use of force.
- 355. — Sexual conduct.
- 356. — Protection from violence, assault, or abuse.
- 357. — Threats, intimidation, and harassment; abusive language.
- 358. — Shackles or other restraints.
- 359. — Search, seizure, and confiscation.

III. PRETRIAL DETENTION.(Cont'd)

- 360. Labor and employment.
- 361. Health and medical care.
- 362. — In general.
- 363. — Self-harm; suicide.
- 364. Place or mode of confinement.
- 365. — In general.
- 366. — Housing assignments; classification and security status.
- 367. — Transfer.
- 368. Duration of confinement; discharge and release.
- 369. Access to courts and public officials.
- 370. Proceedings.
- 371. — In general.
- 372. — Judicial review.
- 373. — Actions and litigation.
- 374. Records.

IV. NONPRISONERS.

- 380. In general.
- 381. Injuries and harm; duty to protect.
- 382. Visitors.
- 383. — In general.
- 384. — Injuries and harm; duty to protect.
- 385. — Search, seizure, and confiscation.
- 386. Hostages.

V. OFFICERS AND EMPLOYEES.

- 390. In general.
- 391. Conduct and control in general.
- 392. Hiring or appointment.
- 393. Discipline.
- 394. Promotion, demotion, assignment, and transfer.
- 395. Compensation and benefits.
- 396. Termination.
- 397. Retirement and pensions.
- 398. Liabilities.
- 399. — In general.
- 400. — Immunity.
- 401. Bonds.
- 402. Private employment.

VI. COSTS OF INCARCERATION.

- 410. In general.
- 411. Persons and entities entitled.
- 412. Persons and entities liable.
- 413. — In general.

310. PRISONS**VI. COSTS OF INCARCERATION.**(Cont'd)

- 414. — Federal government.
- 415. — State government.
- 416. — Local government.
- 417. — Prisoners.
- 418. — Other particular persons or entities.
- 419. Health and medical care.
- 420. Access to courts and public officials.

VII. OFFENSES.

- 430. In general.
- 431. Offenses by prisoners, inmates, or other detainees.
- 432. — In general.
- 433. — Contraband in general.
- 434. — Drugs and alcohol.
- 435. — Weapons.
- 436. — Use of force or violence.
- 437. — Threats, harassment, or intimidation.
- 438. Offenses by non-prisoners.
- 439. — In general.
- 440. — Bringing articles to or communicating with prisoners.

311. PRIVATE ROADS**SUBJECTS INCLUDED**

- Roads established by public authority for accommodation of private persons, but open for free passage to the public
- Nature and scope of power to establish and maintain such roads in general
- Constitutional and statutory provisions relating thereto
- Establishment of such roads, construction, repair, and improvement thereof, and alteration, vacation and abandonment
- Local assessments therefor
- Title to and rights in the land occupied, and removal of and liabilities for obstructions, encroachments, etc.
- Use of such roads, and liabilities for injuries from defects, obstructions, etc., therein

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Eminent domain, see EMINENT DOMAIN
- Rights of way over lands of others, see EASEMENTS
- Roads established for public benefit, see HIGHWAYS
- 1. Nature and essentials.
- 2. Establishment.
 - (1). In general.
 - (2). Jurisdiction and powers of courts and municipal authorities.
 - (3). Parties, petition, and bond.
 - (4). Commissioners, viewers, jurors, surveyors, and other like officers.
 - (5). Judgment, order, or decree, and review.
 - (6). Expenses and costs of proceedings.
 - (7). Operation and effect.
- 3. Alteration.
- 4. Vacation or abandonment.
- 5. Construction and repair.
- 6. Taxes and assessments.
- 7. Obstructions and encroachments.
 - 7.1. — In general.
- 8. — Creation and removal.
- 9. — Civil liability.
- 10. — Criminal responsibility.
- 11. Use for travel.
- 12. Injuries from defects or obstructions.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**SUBJECTS INCLUDED**

- Evidentiary and discovery privileges, protecting disclosure of communications between spouses, attorney and client, physician and patient, and mental health professionals and patients
- Evidentiary and discovery privileges involving public officers such as executive privilege,

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

classified information privilege, deliberative process privilege, and accident reports

Evidentiary and discovery privileges, protecting disclosure of communications to journalists, clergy, and patent agents

Evidentiary and discovery privileges involving trade secrets, settlement negotiations, mediation, self-critical analysis, peer review, and various other privileges

Relations warranting protection of confidential information

Procedures for claiming and determining evidentiary and discovery privileges

Waiver of evidentiary and discovery privileges

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bankruptcy proceedings, see **BANKRUPTCY**

Civil commitment proceedings, see **MENTAL HEALTH**

Confrontation clause, see **CRIMINAL LAW**

Defamation defense for privileged communications, see **LIBEL AND SLANDER**

Discovery in general, see **CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE**

Discovery sanctions, see **CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE**

Electronic Communications Privacy Act, see **TELECOMMUNICATIONS**

First Amendment privilege, see **CONSTITUTIONAL LAW**

Freedom of Information Act, see **RECORDS**

Grand jury proceedings, see **GRAND JURY**

Legislative hearings, see **STATES, UNITED STATES**

Legislative privilege, see **STATES, UNITED STATES**

Litigation privilege, see **TORTS**

Mental health records, see **MENTAL HEALTH** ¶21

Political vote privilege, see **ELECTION LAW**

Presentence reports, see **SENTENCING AND PUNISHMENT**

Privacy Act, see **RECORDS**

Protective orders in discovery, see **CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE**

Public records, see **RECORDS**

Self-incrimination privilege, see **CRIMINAL LAW, WITNESSES**

Sex offender civil commitment or registration proceedings, see **MENTAL HEALTH**

Tax practitioner privilege, see **INTERNAL REVENUE**

Trial preparation materials, see **CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE**

Workers' compensation proceedings, see **WORKERS' COMPENSATION**

Work product privilege, see **CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE**

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- I. IN GENERAL, ¶1–49.
 - II. FAMILY PRIVILEGES, ¶50–99.
 - (A) IN GENERAL, ¶50–59.
 - (B) SPOUSAL PRIVILEGE, ¶60–99.
 - III. ATTORNEY-CLIENT PRIVILEGE, ¶100–199.
 - IV. PHYSICIAN-PATIENT PRIVILEGE, ¶200–299.
 - V. COUNSELORS AND MENTAL HEALTH PROFESSIONALS, ¶300–349.
 - VI. PUBLIC OFFICERS AND RECORDS, ¶350–399.
 - VII. OTHER PRIVILEGES, ¶400–423.

I. IN GENERAL.

- 1. In general.
- 2. Definition of “privilege”.
- 3. Constitutional and statutory provisions.
- 4. What law governs.
- 5. Purpose in general.
- 6. Types of privileges.
- 7. Privileges not favored.
- 8. Discretion of court.
- 9. Actions and proceedings in which privilege is applicable.
- 10. Offensive use doctrine.
- 11. Construction in general.
- 12. Disclosure of underlying facts.
- 13. Mode or form of communications; documents in general.
- 14. Impeachment or rehabilitation of witnesses.
- 15. Criminal or wrongful acts or transactions.
- 16. Confidential or private character of communication.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**I. IN GENERAL.**(Cont'd)

17. Communications through or in presence or hearing of others; communications with third parties.
18. Effect of termination of relation; duration of privilege.
19. Persons entitled to assert privilege in general.
20. Waiver of privilege.
21. Objections; claim of privilege.
22. Privilege logs.
23. Waiver of objections.
24. Evidence.
25. — In general.
26. — Presumptions and burden of proof.
27. — Weight and sufficiency.
28. Determination.
29. — In general.
30. — Questions of law or fact.
31. — In camera review.

II. FAMILY PRIVILEGES.**(A) IN GENERAL.**

50. In general.
51. Parent and child.
52. Siblings.

(B) SPOUSAL PRIVILEGE.

Excludes spousal testimonial privilege, see WITNESSES ¶51.

60. In general.
61. Constitutional and statutory provisions.
62. What law governs.
63. Purpose of privilege.
64. Distinguished from spousal testimonial privilege.
65. Actions and proceedings in which privilege is applicable.
66. Construction.
67. Necessity of valid marriage.
68. Mode or form of communications.
69. — In general.
70. — Writings and documents.
 - (1). In general.
 - (2). Letters and correspondence.
 - (3). Photographs, videos, and tape recordings.
71. Observations of acts and conduct; independent knowledge.

II. FAMILY PRIVILEGES.(Cont'd)

72. Subject matter in general; particular cases.
73. Wrongful acts by both spouses; joint participation.
74. Threats.
75. Sexual relations.
76. Spouse's physical or mental condition.
77. Confessions and admissions.
78. Business and financial affairs; contracts and conveyances; wills and trusts.
79. Impeachment or rehabilitation of witnesses.
80. Confidential or private character of communications.
81. Communications through or in presence or hearing of others; communications with third parties.
82. Communications before marriage.
83. Effect of divorce, separation, or death.
84. Persons entitled to assert privilege.
85. Waiver of privilege.
86. Objections; claim of privilege.
87. Waiver of objections.
88. Evidence.
89. — In general.
90. — Presumptions and burden of proof.
91. Determination.
92. — In general.
93. — Questions of law or fact.
94. — In camera review.

III. ATTORNEY-CLIENT PRIVILEGE.

Duty not to disclose confidential information and liability for disclosing such information, see ATTORNEYS AND LEGAL SERVICES.

100. In general.
101. Nature of privilege.
102. Elements in general; definition.
103. Distinguished from work product.
104. Constitutional and statutory provisions.
105. What law governs.
106. Purpose of privilege.
107. Privilege not favored.
108. Absolute or qualified privilege.
109. Discretion of court.
110. Actions and proceedings in which privilege is applicable.
111. Offensive use doctrine; abuse of privilege.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**III. ATTORNEY-CLIENT PRIVILEGE.(Cont'd)**

- 112. Construction.
- 113. Fiduciary exception.
- 114. Self-defense exception; breach of duty between attorney and client.
- 115. Relation of attorney and client.
- 116. — In general.
- 117. — Employment in matters not relating to communication.
- 118. — Termination of relation.
- 119. — Death of client or attorney.
- 120. Parties and interests represented by attorney.
- 121. — In general.
- 122. — Common interest doctrine; joint clients or joint defense.
- 123. — Corporations, partnerships, associations, and other entities.
- 124. — Insurers and insureds.
- 125. — Trustees, guardians, and administrators; pension plans.
- 126. — Government and government employees and officers.
- 127. — Receivers.
- 128. Professional character of employment or transaction.
- 129. — In general.
- 130. — Business communications.
- 131. — Particular cases.
- 132. Communications from client to attorney and from attorney to client.
- 133. Communications between attorneys.
- 134. Communications to prosecuting attorney.
- 135. Mode or form of communications.
- 136. — In general.
- 137. — Documents and records in general.
- 138. — Minutes of meetings and transcripts.
- 139. — Letters and correspondence.
- 140. — Photographs, videos, and tape recordings.
- 141. — E-mail and electronic communication.
- 142. Effect of delivery of nonprivileged materials to attorney; preexisting documents.
- 143. Factual information; independent knowledge; observations and mental impressions.

III. ATTORNEY-CLIENT PRIVILEGE.(Cont'd)

- 144. Subject matter; particular cases.
- 145. — In general.
- 146. — Client information; retainer and authority.
- 147. — Date and place of trial or hearing.
- 148. — Mental or physical condition of client in general.
- 149. — Wills, trusts, and estates.
- 150. — Conveyances and contracts.
- 151. — Patents and trademarks.
- 152. — Insurance.
- 153. Impeachment or rehabilitation of witnesses.
- 154. Criminal or other wrongful act or transaction; crime-fraud exception.
- 155. Other exceptions.
- 156. Confidential character of communications or advice.
- 157. Communications through or in presence or hearing of others; communications with third parties.
- 158. — In general.
- 159. — Agents or employees of attorney or client in general.
- 160. — Experts and professionals in general.
- 161. — Accountants and auditors.
- 162. — Legal secretaries, stenographers, paralegals, or clerks.
- 163. — Investigators and detectives.
- 164. — Polygraph examiners.
- 165. — Physicians and mental health professionals.
- 166. — Interpreters.
- 167. Persons entitled to assert privilege.
- 168. Waiver of privilege.
- 169. Objections; claim of privilege.
- 170. Waiver of objections.
- 171. Evidence.
- 172. — In general.
- 173. — Presumptions and burden of proof.
- 174. — Weight and sufficiency.
- 175. Determination.
- 176. — In general.
- 177. — Questions of law or fact.
- 178. — In camera review.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**IV. PHYSICIAN-PATIENT PRIVILEGE.**

Excludes disciplinary proceedings, see HEALTH; excludes duty not to disclose confidential information and liability for disclosing such information, see HEALTH.

- 200. In general.
- 201. Nature of privilege; necessity of statute.
- 202. Elements in general.
- 203. Constitutional and statutory provisions.
- 204. What law governs.
- 205. Purpose of privilege.
- 206. Absolute or qualified privilege.
- 207. Scope of privilege in general.
- 208. Discretion of court; balancing test.
- 209. Actions and proceedings in which privilege is applicable; exceptions and exemptions.
- 210. — In general.
- 211. — Exceptions in general.
- 212. — Dangerousness exception.
- 213. — Criminal cases.
- 214. — Child abuse or neglect.
- 215. — Child custody.
- 216. — Motor vehicle offenses.
- 217. — Medical malpractice actions; self-defense exception.
- 218. — Homicide exception.
- 219. — Criminal or other wrongful acts or transactions; crime-fraud exception.
- 220. Offensive use doctrine.
- 221. Construction.
- 222. Who are physicians.
- 223. — In general.
- 224. — Dentists.
- 225. — Nurses.
- 226. Relation of physician and patient; professional character of employment.
- 227. — In general.
- 228. — Death of patient.
- 229. — Court-ordered examinations; court-appointed physicians.
- 230. Subject matter.
- 231. — In general.
- 232. — Name or identity of patient.
- 233. — Physical condition and treatment in general.
- 234. — Mental condition or sanity in general.
- 235. — Mental condition or sanity; wills and trusts.
- 236. — Place, nature, or cause of injury.

IV. PHYSICIAN-PATIENT PRIVILEGE.(Cont'd)

- 237. — Fact of treatment.
- 238. — Blood, tissue, and urine samples and tests.
- 239. — Infectious diseases.
- 240. — Identity of blood donors.
- 241. — Cause of death; autopsy; death certificates.
- 242. — Confessions and admissions.
- 243. — Threats.
- 244. — Insurance cases.
- 245. — Abortion.
- 246. — Contracts of employment; fee agreements; medical bills.
- 247. Impeachment or rehabilitation of witnesses.
- 248. Emergency medical services.
- 249. Mode or form of communications or information in general; physical evidence.
- 250. Communications between physician and patient.
- 251. Communications with attorneys or other parties; ex parte communications.
- 252. Communications with public officers; duty to report.
- 253. Communications with other health care providers.
- 254. Observations and independent knowledge; factual information.
- 255. Testimonial use of confidential information; hypothetical questions.
- 256. Medical or hospital records or information.
- 257. Photographs and x-rays.
- 258. Prescriptions and pharmacy records; controlled substances.
- 259. Health information statutes and regulations.
See also HEALTH ¶196.
- 260. Confidential character of communications or information.
- 261. Communications through or in presence or hearing of others.
- 262. Persons entitled to assert privilege.
- 263. Waiver of privilege.
- 264. — In general.
- 265. — Acts constituting waiver.
- 266. — Waiver by contract; releases.
- 267. Objections; claim of privilege.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**IV. PHYSICIAN-PATIENT PRIVILEGE.**(Cont'd)

- 268. Waiver of objections.
- 269. Evidence.
- 270. — In general.
- 271. — Presumptions and burden of proof.
- 272. — Weight and sufficiency.
- 273. Determination.
- 274. — In general.
- 275. — Questions of law or fact.
- 276. — In camera review.

V. COUNSELORS AND MENTAL HEALTH PROFESSIONALS.

Excludes civil commitment proceedings, see MENTAL HEALTH; excludes sex offender civil commitment or registration proceedings, see MENTAL HEALTH; excludes guardianship proceedings, see GUARDIAN AND WARD, MENTAL HEALTH.

- 300. In general.
- 301. Constitutional and statutory provisions.
- 302. What law governs.
- 303. Actions and proceedings in which privilege is applicable; exceptions and exemptions.
- 304. — In general.
- 305. — Criminal cases.
- 306. — Child abuse or neglect.
- 307. — Child custody.
- 308. — Mental competency or sanity of criminal defendants.
- 309. — Homicide exception.
- 310. Court-ordered examinations; court-appointed professionals.
- 311. Professionals in general; therapists in general.
- 312. Psychotherapists.
- 313. Physicians; psychiatrists.
- 314. Psychologists.
- 315. Marriage counselors; family counselors.
- 316. Social workers.
- 317. Victim-counselors in general.
- 318. Sexual assault counselors.
- 319. Substance abuse.
- 320. Mental health records.
- 321. Mental health information statutes and regulations.
See also MENTAL HEALTH ⇨21.
- 322. Persons entitled to assert privilege.
- 323. Waiver of privilege.
- 324. Objections; claim of privilege.
- 325. Waiver of objections.

V. COUNSELORS AND MENTAL HEALTH PROFESSIONALS.(Cont'd)

- 326. Evidence.
- 327. — In general.
- 328. — Presumptions and burden of proof.
- 329. Determination.
- 330. — In general.
- 331. — Questions of law or fact.
- 332. — In camera review.

VI. PUBLIC OFFICERS AND RECORDS.

- 350. In general.
- 351. Official information in general.
- 352. Communications to public officers in general.
- 353. Executive privilege in general.
- 354. — In general.
- 355. — Presidential privilege.
- 356. — Gubernatorial privilege.
- 357. Public interest privilege.
- 358. Investigatory or law enforcement records.
- 359. Surveillance positions and locations.
- 360. Classified information; state secrets; military secrets.
- 361. Deliberative process privilege; mental process privilege.
- 362. Regulation of financial institutions; bank examination privilege.
See also FEDERAL CIVIL PROCEDURE ⇨1586, *PRETRIAL PROCEDURE* ⇨374.
- 363. Pardon and parole; probation.
- 364. Judicial deliberation privilege; judicial communications.
- 365. Road crossing safety; reports, surveys, or data.
- 366. Personnel files.
- 367. Armed services; veterans.
- 368. Unemployment compensation proceedings and records.
- 369. Licensing boards.
- 370. Social security and public welfare proceedings and records.
- 371. Census information.
- 372. Tax returns or information.
See also FEDERAL CIVIL PROCEDURE ⇨1603, *PRETRIAL PROCEDURE* ⇨388.
- 373. Accident reports.
See also PRETRIAL PROCEDURE ⇨373.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

374. Informer's privilege; identity of informer.

Excludes compelling disclosure in criminal cases, other than on examination of witnesses, see CRIMINAL LAW.

375. Public health records.

376. Juvenile records.

See also INFANTS XVIII.

377. Criminal records.

378. Miscellaneous privileges.

VII. OTHER PRIVILEGES.

400. Constitutional privileges in general.

401. Privacy in general.

See also CONSTITUTIONAL LAW XI.

402. Trade secrets; commercial information.

403. Clergy and spiritual advisers.

404. Journalists.

405. Accountant and client.

406. Financial information in general.

See also PRETRIAL PROCEDURE ¶375.

407. Bank and customer; bank records.

See also FEDERAL CIVIL PROCEDURE ¶1586, PRETRIAL PROCEDURE ¶374.

408. Private investigator privilege.

409. Insurer and insured.

See also FEDERAL CIVIL PROCEDURE ¶1595, PRETRIAL PROCEDURE ¶381.

410. School records; teacher and student.

411. Scholars and academicians.

412. Appraisers.

413. Employment relationships; personnel records.

See also FEDERAL CIVIL PROCEDURE ¶1591, PRETRIAL PROCEDURE ¶378.

414. Partners and partnerships.

415. Patent agents.

416. Labor unions and members.

417. Settlement negotiation privilege; mediation and arbitration.

418. Self critical analysis.

419. Peer review privilege.

420. — In general.

421. — Academic peer review.

422. — Medical or health care peer review.

See also HEALTH ¶200.

- (1). In general.

- (2). Waiver.

423. Miscellaneous privileges; particular cases.

313. PROCESS**SUBJECTS INCLUDED**

Writs, mandates, precepts, or notices, issued by a court or judge, clerk, attorney or other officer, in or incident to proceedings in civil actions in general, and more particularly such instruments by which civil actions are begun, and defendants therein are required to appear and answer or are notified of the bringing of the action

Issuance, requisites, and validity of such instruments in general

Service thereof, personal or substituted, or by publication, privilege from service, and return

Defects in process or return, and objections therefor, and how objections to process or service may be taken

Amendment of process or return

Quashing or setting aside process or return

Abuse of process in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Appearance, waiver of objections to process or service by, see APPEARANCE

Criminal prosecutions, process in, see CRIMINAL LAW, ARREST, EXTRADITION AND DETAINERS, SEARCHES AND SEIZURES

Final process, see CREDITORS' REMEDIES

Justices of the peace, process peculiar to proceedings before, see JUSTICES OF THE PEACE

Malicious prosecution, liability for, see MALICIOUS PROSECUTION

Other particular purposes, process for—

Arrest or other special remedies in action, see ARREST, CREDITORS' REMEDIES, and other specific topics

Attendance of—

Jurors, see JURY

Witnesses, see WITNESSES

Particular actions or proceedings, process in —

Bankruptcy and insolvency proceedings, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183

313. PROCESS

Civil proceedings other than actions, see HABEAS CORPUS, MANDAMUS, PROHIBITION, QUO WARRANTO, SCIRE FACIAS, and topics relating to other special proceedings

Particular civil actions, see AUTOMOBILES, INSURANCE, and other specific topics

Probate proceedings, see EXECUTORS AND ADMINISTRATORS, WILLS

Suits in equity or admiralty, see EQUITY, ADMIRALTY

Particular classes of persons, process against and service, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, and other specific topics

Particular courts, process peculiar to, see COURTS

Review of proceedings in actions, writs and other process for, see APPEAL AND ERROR, CERTIORARI, REVIEW, AUDITA QUERELA

Wrongful use of particular writs or other mandates of courts, see CREDITORS' REMEDIES, INJUNCTION, and other specific topics

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY, ¶1–47.

II. SERVICE, ¶48–150.

(A) PERSONAL SERVICE IN GENERAL, ¶48–68.

(B) SUBSTITUTED SERVICE, ¶69–83.

(C) PUBLICATION OR OTHER NOTICE, ¶84–111.

(D) PRIVILEGES AND EXEMPTIONS, ¶112–126.

(E) RETURN AND PROOF OF SERVICE, ¶127–150.

III. DEFECTS, OBJECTIONS, AND AMENDMENT, ¶151–171.

IV. ABUSE OF PROCESS, ¶172–213.

(A) IN GENERAL, ¶172–199.

(B) ACTIONS AND PROCEEDINGS, ¶200–213.

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY.

1. Nature of process in general.
2. Constitutional and statutory provisions.
3. Necessity and use in judicial proceedings.
4. — In general.
5. — Institution of action or proceeding.

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY.(Cont'd)

6. — After amendment of pleading or other proceeding.
7. Forms of process for institution or notice of action or other proceeding.
8. — In general.
9. — Capias.
10. — Writ of summons.
11. — Summons as notice.
12. — Notice of action.
13. — Warning order.
14. — Particular proceedings.
15. Persons against whom process may issue.
16. — In general.
17. — Citizenship and residence.
18. Authority to issue.
19. Counties or districts to which process may issue.
20. Officer to whom writ may be directed.
21. Time for issuance.
22. Praecipe or direction to issue.
23. Issuance and record thereof.
24. Requisites and validity of writs or other process in general.
25. Entitling.
26. Designation of court and term.
27. Venue or designation of place of trial.
28. Name in which writ should run.
29. Direction to particular officer or county.
30. Command to serve.
31. Direction to or designation of parties.
32. Codefendants.
33. Requirement as to appearance and pleading.
34. Statement as to nature, form, or cause of action.
35. Notice of relief to be demanded.
36. Directions for return.
37. Teste.
38. Date.
39. Signature.
40. Address of plaintiff or attorney.
41. Seal.
42. Indorsements.
43. Delivery to and receipt by officer.
44. Renewal and reissue.
45. Alias and pluries writs.

313. PROCESS**I. NATURE, ISSUANCE, REQUISITES,
AND VALIDITY.(Cont'd)**

- 46. Alteration of writ or other process.
- 47. Warning order.

II. SERVICE.**(A) PERSONAL SERVICE IN GENERAL.**

- 48. Nature and necessity in general.
- 49. Statutory provisions.
- 50. Authority or capacity to serve.
- 51. — In general.
- 52. — Officer.
- 53. — Person specially authorized or deputed.
- 54. — Indifferent or disinterested person.
- 55. — Party or person interested.
- 56. Persons to be served.
- 57. — In general.
- 58. — Attorney or agent of party.
- 59. — Codefendants.
- 60. Place for service.
- 61. — In general.
- 62. — Nonresidents.
- 63. Time for service.
- 64. Mode and sufficiency of service.
- 65. Service procured by fraud.
- 66. Service of pleading with process.
- 67. Acceptance or acknowledgment of service.
- 68. Operation and effect.

(B) SUBSTITUTED SERVICE.

- 69. Nature and necessity in general.
- 70. Statutory provisions.
- 71. Actions and proceedings in which substituted service is authorized.
- 72. Persons on whom substituted service may be made.
- 73. Grounds and conditions precedent.
- 74. Application for order.
- 75. Order for substituted service.
- 76. Mode and sufficiency of service.
- 77. — In general.
- 78. — Leaving copy at residence or other place.
- 79. — Leaving copy with member of family or other person.
- 80. — Service on attorney or agent.
- 81. — Posting as constructive service.

II. SERVICE.(Cont'd)

- 82. — Mailing as constructive service.
- 83. — Personal service out of jurisdiction.

(C) PUBLICATION OR OTHER NOTICE.

- 84. Nature and necessity in general.
- 85. Statutory provisions.
- 86. Actions and proceedings in which publication is authorized.
- 87. Persons on whom service by publication may be made.
- 88. Grounds and conditions precedent.
- 89. — In general.
- 90. — Inability to make personal service.
- 91. — Return of process.
- 92. — Sufficiency and filing of declaration, complaint, or other pleading.
- 93. Jurisdiction or authority to order publication.
- 94. Application for order for publication.
- 95. — In general.
- 96. — Affidavits.
 - (1). In general.
 - (2). Requisites and sufficiency in general.
 - (3). Statements as to nature or cause of action.
 - (4). Residence or nonresidence, due diligence, and inability to make personal service.
 - (5). Collateral attack.
- 97. — Hearing and determination.
- 98. Order for publication.
- 99. Filing or record.
- 100. Warning order.
- 101. Notice of action.
- 102. Mode and sufficiency of publication.
- 103. — In general.
- 104. — Notice and other matters to be published.
- 105. — Newspaper or other periodical in which publication to be made.
- 106. — Time and number of publications.
- 107. — Posting in addition to publication.
- 108. — Mailing in addition to publication.
- 109. Personal service out of jurisdiction in lieu of publication.
- 110. Time when service complete.
- 111. Operation and effect.

313. PROCESS**(D) PRIVILEGES AND EXEMPTIONS.**

- 112. Nature and purpose in general.
- 113. Statutory provisions.
- 114. Official position or character.
- 115. Employment in public service.
- 116. Attendance at sessions of Legislature or legislative committee.
- 117. Attendance at court.
- 118. — In general.
- 119. — Parties.
- 120. — Witnesses.
- 121. — Jurors.
- 123. Voters on day of election.
- 124. Day kept holy by party.
- 125. Waiver or loss.
- 126. Protection and enforcement of rights.

(E) RETURN AND PROOF OF SERVICE.

- 127. Nature and necessity in general.
- 128. Statutory provisions.
- 129. Authority to make.
- 130. County or court to which to be made.
- 131. Time for making.
- 132. Form and requisites of return or certificate.
- 133. — In general.
- 134. — Personal service.
- 135. — Substituted or constructive service.
- 136. — Process not served.
- 137. Form and requisites of affidavit of service.
- 138. Proof of service by publication.
- 139. Filing or record.
- 140. Operation and effect in general.
- 141. Conclusiveness of return or certificate in general.
- 142. Collateral attack.
- 143. Grounds for impeaching or contradicting.
- 144. Evidence as to service.
- 144.1. — In general.
- 145. — Presumptions and burden of proof.
- 146. — Admissibility in general.
- 147. — Evidence to aid return, certificate, or affidavit of service.
- 148. — Evidence to impeach or contradict return, certificate, or affidavit of service.

II. SERVICE.(Cont'd)

- 149. — Weight and sufficiency.
- 150. Failure to make or file return or proof.

III. DEFECTS, OBJECTIONS, AND AMENDMENT.

- 151. Invalidity or irregularity of process and service in general.
- 151.5. Statutory provisions.
- 152. Defects and irregularities in writ or other process or notice.
- 153. Defects and irregularities in service or return or proof thereof.
- 154. Parties entitled to object.
- 155. Necessity and mode of objection in general.
- 156. Time for objection.
- 157. Quashing or vacating writ or other process or notice.
- 158. Quashing or vacating service or return or proof thereof in general.
- 159. Vacating order for publication and service thereunder.
- 160. Traverse of return.
- 161. Amendment of defects.
- 162. — In general.
- 163. — Writ or other process or notice.
- 164. — Return of proof of service in general.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Defects amendable.
 - (4). Operation and effect.
- 165. — Proceedings for service by publication and proof of service.
- 166. Waiver of defects and objections.
- 167. Cure of defects by subsequent proceedings.

IV. ABUSE OF PROCESS.

Includes the malicious or wrongful abuse or perversion of process rightfully and regularly issued. Malicious "use" of process not rightfully and regularly issued, see FALSE IMPRISONMENT or MALICIOUS PROSECUTION.

(A) IN GENERAL.

- 172. In general.
- 173. Nature and elements in general.
- 174. Process, what constitutes.
- 175. Use of process.

313. PROCESS**IV. ABUSE OF PROCESS.(Cont'd)**

- 176. Malicious prosecution, or other causes of action, distinguished.
- 177. Misuse of process.
- 178. Improper, ulterior, collateral, or unlawful purpose.
- 179. Malice or intent.
- 180. Overt act.
- 181. Termination of underlying proceedings.
- 182. Probable cause.
- 183. Resulting damage.
- 184. Defenses in general.
- 185. Advice of counsel.
- 186. Privileges.
- 187. Persons liable; immunity.
- 188. — In general.
- 189. — Non-litigants in general.
- 190. — Attorneys and agents.
- 191. — Officers and public employees.
- 192. Particular cases.

(B) ACTIONS AND PROCEEDINGS.

- 200. In general.
- 201. What law governs.
- 202. Preemption.
- 203. Time to sue; laches.
- 204. Pleading.
- 205. Parties.
- 206. Evidence.
- 207. — In general.
- 208. — Admissibility.
- 209. — Presumptions and burden of proof.
- 210. — Weight and sufficiency.
- 211. Damages; relief granted.
- 212. Trial in general.
- 213. Instructions.

313A. PRODUCTS LIABILITY**SUBJECTS INCLUDED**

The liability of manufacturers, distributors, retailers, and others for damage caused by defects or dangers in their products, on theories of strict liability, negligence, and other tort theories

Liability of a pharmacist for injury caused by the dispensing of drugs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bailor's liability, see AUTOMOBILES, BAILMENT

Consumer protection statutes, regulation and liability under, see ANTITRUST AND TRADE REGULATION III

Liability of health care professionals other than pharmacists for injury caused by the dispensing of drugs, see HEALTH V

Particular products, liabilities relating to—

Electricity, see ELECTRICITY

Explosives, see EXPLOSIVES

Food, see FOOD

Gas, see GAS

Warranty, liability for breach of, see CONTRACTS, SALES

I. IN GENERAL, ¶100–109.

II. ELEMENTS AND CONCEPTS, ¶110–199.

III. PARTICULAR PRODUCTS, ¶200–299.

IV. ACTIONS, ¶300–451.

(A) IN GENERAL, ¶300–309.

(B) PLEADING, ¶310–329.

(C) EVIDENCE, ¶330–399.

1. IN GENERAL, ¶330–339.

2. PRESUMPTIONS AND BURDEN OF PROOF, ¶340–359.

3. ADMISSIBILITY OF EVIDENCE, ¶360–379.

4. WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶380–399.

(D) QUESTIONS OF LAW OR FACT, ¶400–419.

(E) INSTRUCTIONS, ¶420–449.

(F) VERDICT AND FINDINGS, ¶450–451.

I. IN GENERAL.

100. In general.

101. Constitutional and statutory provisions.

102. — In general.

103. — Validity and constitutionality.

104. — Retroactivity.

105. What law governs.

106. Federal preemption in general.

313A. PRODUCTS LIABILITY**II. ELEMENTS AND CONCEPTS.**

- 110. In general.
- 111. Nature and elements in general.
- 112. Liability as insurer.
- 113. Strict liability.
- 114. Negligence or fault.
- 115. Care required.
- 116. Knowledge of defect or danger.
- 117. Representations or concealment; fraud.
- 118. Nature of product and existence of defect or danger.
- 119. — In general.
- 120. — What is a product, in general.
- 121. — Services as distinguished from products.
- 122. — Types of defects actionable.
- 123. — Unavoidably unsafe products.
- 124. — Open and obvious danger.
- 125. Manufacturing defect.
- 126. Design.
- 127. — In general.
- 128. — Alternative design, in general.
- 129. — Risk-utility test.
- 130. — Consumer expectations.
- 131. — Components and raw materials.
- 132. Warnings or instructions.
- 133. — In general.
- 134. — Obvious danger.
- 135. — Intermediaries and third parties, in general.
- 136. — Learned intermediary.
- 137. — Sophisticated user.
- 138. — Bulk suppliers.
- 139. — Component parts.
- 140. — Post-sale duties.
- 141. Precautions or safeguards.
- 142. — In general.
- 143. — Post-sale duties in general.
- 144. — Recall or retrofit.
- 145. Inspection or test.
- 146. Proximate cause.
- 147. — In general.
- 148. — Design.
- 149. — Warnings or instructions.
- 150. Foreseeability in general; foreseeable accident or injury.
- 151. Foreseeable or intended use.
- 152. Foreseeable misuse.
- 153. Lapse of time or change in condition.

II. ELEMENTS AND CONCEPTS.(Cont'd)

- 154. Nature of injury or damage.
- 155. — In general.
- 156. — Economic losses; damage to product itself.
- 157. Persons entitled to sue.
- 158. — In general.
- 159. — Privity of contract as requirement in general.
- 160. — Inherently or imminently dangerous products, privity.
- 161. — Remote or ultimate buyers or users.
- 162. — Bystanders.
- 163. Persons liable.
- 164. — In general.
- 165. — Manufacturers in general; identification.
- 166. — Market share theory.
- 167. — Distributors and wholesalers.
- 168. — Retailers.
- 169. — Occasional or casual sellers.
- 170. — Trademark licensors.
- 171. — Trade associations.
- 172. — Joint tortfeasors in general.
- 173. — Joint and several liability.
- 174. — Components and raw materials; bulk suppliers.
- 175. Defenses in general.
- 176. Limitation of liability.
- 177. Government contractors.
- 178. State of the art.
- 179. Fault of plaintiff or third persons.
- 180. — In general.
- 181. — Contributory negligence, in general.
- 182. — Misuse of product.
- 183. — Comparative negligence and apportionment of fault.
- 184. Assumption of risk.

III. PARTICULAR PRODUCTS.

Each line in this section includes components of, and accessories for, the listed product.

- 200. Aircraft.
- 201. Asbestos.
This line is inclusive as to asbestos contained in other products listed in lines hereunder.
- 202. Automobiles.
- 203. — In general.

313A. PRODUCTS LIABILITY**III. PARTICULAR PRODUCTS.(Cont'd)**

- 204. — Brakes.
- 205. — Tires and wheels.
- 206. — Trailers.
- 207. — Motor homes.
- 208. — Crashworthiness in general.
- 209. — Seat belts and occupant restraint systems.
- 210. — Motorcycles.
- 211. Bicycles.
- 212. Boats; watercraft.
- 213. Bottles and other containers.
- 214. Buildings and building components and materials.
Asbestos-related claims, see ¶201.
- 215. Mobile homes.
- 216. Furniture.
- 217. Chemicals in general.
- 218. Adhesives and paints; solvents in general.
- 219. Cleaning products, household and commercial, in general.
- 220. Drain-cleaning products.
- 221. Cosmetics, soaps, and hair-care products.
- 222. Pesticides, herbicides, insecticides, fungicides, and rodenticides.
- 223. Health care and medical products.
- 224. — In general.
- 225. — Drugs in general.
- 226. — Medical devices and appliances in general.
- 227. — Implants and prosthetic devices.
- 228. — Contraceptive drugs and devices.
- 229. — Feminine hygiene products.
- 230. — Vaccines and immunizations.
Government compensation programs, see HEALTH ¶389.
- 231. — Blood and blood products.
- 232. Veterinary drugs and animal health products.
- 233. Feed and seed; pet food.
- 234. Machinery, tools, and appliances in general.
- 235. Miscellaneous machines, tools, and appliances.
- 236. Cranes, elevators, and hoisting apparatus.
- 237. Forklifts and loaders.
- 238. Farm machinery and equipment.

III. PARTICULAR PRODUCTS.(Cont'd)

- 239. — In general.
- 240. — Farm tractors.
- 241. — Grain storage and processing; silos.
- 242. Heating equipment and appliances.
- 243. — In general.
- 244. — Furnaces.
- 245. — Water heaters.
- 246. — Clothes dryers.
- 247. Cooling equipment and appliances.
- 248. — In general.
- 249. — Air conditioners.
- 250. — Refrigerators and freezers.
- 251. Miscellaneous household appliances.
- 252. Food preparation equipment and utensils.
- 253. — In general.
- 254. — Cutting or grinding food.
- 255. — Cooking or heating food; ovens and stoves.
- 256. Ladders and scaffolds.
- 257. Lighters.
- 258. Mining and drilling equipment.
- 259. Mowers; lawn and garden equipment in general.
- 260. Presses and molding machines.
- 261. Railroad cars, engines, and equipment.
- 262. Saws, grinders, and cutters.
Cutting or grinding food, see ¶254.
- 263. Tobacco products.
- 264. Athletic and recreational equipment, in general; toys and games.
- 265. Helmets.
- 266. — In general.
- 267. — Sports and recreational activities in general.
- 268. — Vehicles.
- 269. — Workplace and related uses.
- 270. Swimming pools.
- 271. Computers and software.
- 272. Telecommunications equipment.
- 273. Weapons and ammunition.
- 274. — In general.
- 275. — Handguns.
- 276. — Air guns and BB guns.
- 277. Wearing apparel.
- 278. — In general.

313A. PRODUCTS LIABILITY**III. PARTICULAR PRODUCTS.**(Cont'd)

- 279. — Sleepwear.
- 280. — Protective gear.
Helmets, see ¶265.
- 281. Eyewear.
- 282. Miscellaneous products.

IV. ACTIONS.**(A) IN GENERAL.**

- 300. In general.
- 301. Nature and form of remedy.
- 302. Grounds and conditions precedent.
- 303. — In general.
- 304. — Affidavit or certification of expert.
- 305. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

(B) PLEADING.

- 310. In general.
- 311. Elements in general.
- 312. Strict liability.
- 313. Negligence.
- 314. Nature of product and existence of defect or danger.
- 315. Representations or concealment; fraud.
- 316. Manufacturing defect.
- 317. Design defect.
- 318. Warnings or instructions.
- 319. Proximate cause.
- 320. — In general.
- 321. — Design defect.
- 322. — Warnings or instructions.
- 323. Foreseeable or intended injury or use; foreseeable misuse.
- 324. Defenses and mitigating circumstances.
- 325. — In general.
- 326. — Contributory and comparative fault in general; apportionment.
- 327. — Misuse of product.
- 328. — Assumption of risk.

(C) EVIDENCE.**1. IN GENERAL.**

- 330. In general.

2. PRESUMPTIONS AND BURDEN OF PROOF.

- 340. In general.
- 341. Strict liability.
- 342. Negligence.

IV. ACTIONS.(Cont'd)

- 343. Nature of product and existence of defect or danger.
- 344. Representations or concealment; fraud.
- 345. Manufacturing defect.
- 346. Design defect.
- 347. Warnings or instructions.
- 348. Proximate cause.
- 349. — In general.
- 350. — Design defect.
- 351. — Warnings or instructions.
 - (1). In general.
 - (2). Heeding.
- 352. Foreseeable or intended injury or use; foreseeable misuse.
- 353. Defenses and mitigating circumstances.
- 354. — In general.
- 355. — Contributory and comparative fault in general; apportionment.
- 356. — Misuse of product.
- 357. — Assumption of risk.
- 358. Happening of injury, accident, or malfunction, in general.
- 359. Res ipsa loquitur.

3. ADMISSIBILITY OF EVIDENCE.

Evidence of subsequent remedial measures, see EVIDENCE ¶219.10.

- 360. In general.
- 361. Strict liability.
- 362. Negligence.
- 363. Nature of product and existence of defect or danger.
- 364. Representations or concealment; fraud.
- 365. Manufacturing defect.
- 366. Design defect.
- 367. Warnings or instructions.
- 368. Proximate cause.
- 369. — In general.
- 370. — Design defect.
- 371. — Warnings or instructions.
- 372. Foreseeable or intended injury or use; foreseeable misuse.
- 373. Defenses and mitigating circumstances.
- 374. — In general.
- 375. — Contributory and comparative fault in general; apportionment.
- 376. — Misuse of product.
- 377. — Assumption of risk.
- 378. State of the art.

313A. PRODUCTS LIABILITY**4. WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 380. In general.
- 381. Standard of proof, in general.
- 382. Strict liability.
- 383. Negligence.
- 384. Nature of product and existence of defect or danger.
- 385. Representations or concealment; fraud.
- 386. Manufacturing defect.
- 387. Design defect.
- 388. Warnings or instructions.
- 389. Proximate cause.
- 390. — In general.
- 391. — Design defect.
- 392. — Warnings or instructions.
- 393. Foreseeable or intended injury or use; foreseeable misuse.
- 394. Defenses and mitigating circumstances.
- 395. — In general.
- 396. — Contributory and comparative fault in general; apportionment.
- 397. — Misuse of product.
- 398. — Assumption of risk.

(D) QUESTIONS OF LAW OR FACT.

- 400. In general.
- 401. Strict liability.
- 402. Negligence.
- 403. Nature of product and existence of defect or danger.
- 404. Representations or concealment; fraud.
- 405. Manufacturing defect.
- 406. Design defect.
- 407. Warnings or instructions.
- 408. Proximate cause.
- 409. — In general.
- 410. — Design defect.
- 411. — Warnings or instructions.
- 412. Foreseeable or intended injury or use; foreseeable misuse.
- 413. Defenses and mitigating circumstances.
- 414. — In general.
- 415. — Contributory and comparative fault in general; apportionment.
- 416. — Misuse of product.
- 417. — Assumption of risk.

(E) INSTRUCTIONS.

- 420. In general.

IV. ACTIONS.(Cont'd)

- 421. Strict liability.
- 422. Negligence.
- 423. Nature of product and existence of defect or danger.
- 424. Representations or concealment; fraud.
- 425. Manufacturing defect.
- 426. Design defect.
- 427. Warnings or instructions.
- 428. Proximate cause.
- 429. — In general.
- 430. — Design defect.
- 431. — Warnings or instructions.
- 432. Foreseeable or intended injury or use; foreseeable misuse.
- 433. Defenses and mitigating circumstances.
- 434. — In general.
- 435. — Contributory and comparative fault in general; apportionment.
- 436. — Misuse of product.
- 437. — Assumption of risk.
- 438. Presumptions and burden of proof.
- 439. — In general.
- 440. — Happening of injury, accident, or malfunction in general.
- 441. — Res ipsa loquitur.

(F) VERDICT AND FINDINGS.

- 450. In general.
- 451. Consistency of verdict.

314. PROHIBITION**SUBJECTS INCLUDED**

Writs of prohibition or in the nature thereof, forbidding prosecution of particular proceedings before inferior courts or other tribunals, judges, boards, officers, or corporations, as being without or in excess of their jurisdiction

Nature and scope of the remedy in general

Grounds of such writs and defenses thereto

To and against whom and to forbid what proceedings they are allowed

315. PROPERTY

Jurisdiction to grant and proceedings to obtain the writ

Issuance of alternative or absolute writs, requisites and validity thereof, service thereof, return to alternative writs, and proceedings thereon

Judgments or orders and enforcement thereof

Review of proceedings and costs in such proceedings

Disobedience to such writs

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Injunction, preventive relief by, see INJUNCTION

I. NATURE AND GROUNDS, ¶¶1–15.

II. PROCEDURE, ¶¶16–35.

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedies.
 - (1). In general.
 - (2). Remedy by appeal, certiorari, or writ of error in general.
 - (3). Remedy by appeal in particular actions or proceedings.
 - (4). Remedy by appeal in criminal cases.
 - (5). Adequacy of remedy by appeal or writ of error.
4. Discretion as to grant of writ.
5. Acts and proceedings of courts, judges, and judicial officers.
 - (1). In general.
 - (2). Specific acts.
 - (3). Particular proceedings.
 - (4). Proceedings in criminal prosecutions.
6. Acts and proceedings of public officers and boards.
 - (1). In general.
 - (2). Specific acts or proceedings.
 - (3). Title to and possession of office.
7. Acts and proceedings of private corporations and individuals.
8. Grounds for relief.
9. — In general.
10. — Want or excess of jurisdiction.

I. NATURE AND GROUNDS.(Cont'd)

- (1). In general.
- (2). Particular acts or proceedings.
- (3). Criminal prosecutions.
11. — Errors and irregularities.
12. Defenses and grounds of opposition.
13. Prohibition ineffectual or not beneficial.
14. Abatement of proceedings.
15. Persons entitled to relief.

II. PROCEDURE.

16. Jurisdiction or authority to issue.
17. Presentation of objections in original proceeding.
18. Time for application, and laches.
19. Parties.
20. Petition, suggestion, or other application.
21. Affidavits on application.
22. Notice or rule to show cause.
23. Preliminary or alternative writ.
24. Motion to quash or dismiss rule or alternative writ.
25. Demurrer to petition or to alternative writ.
26. Return or answer and subsequent pleadings.
27. Evidence.
28. Scope of inquiry and powers of court.
29. Hearing and determination.
30. Scope and extent of relief.
31. Judgment or order.
32. Peremptory or absolute writ.
33. Violation of writ and punishment.
34. Appeal and error.
35. Costs.

315. PROPERTY

SUBJECTS INCLUDED

Nature and subjects of rights of property in general

Distinction between different kinds of property

315. PROPERTY

Nature and incidents of interests in real or personal property in general, and of estates in fee or in absolute ownership

Life estates, remainders, and reversions

Estates tail

Ground rents and ground leases

Union or merger of estates

Concurrent property interests; more particularly, joint tenancies and tenancies in common

Additions or increments to property, real or personal, or augmentation of its value otherwise than by intermingling goods of the same kind

Rights and liabilities arising from the making of improvements on real property by others than the owners of the soil

Chattels affixed or annexed to real property, and rights and liabilities in respect to such fixtures incident to or affected by particular estates or interests in the realty

Acts done or permitted by tenants holding particular estates in real property, causing permanent or lasting injury to the inheritance or to rights of those entitled in reversion or remainder

Matters relating to acquisition, ownership, possession, and transfer of property generally

Remedies, actions, and proceedings concerning property in general

Evidence of title and possession

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Abandoned property, see ABANDONED AND LOST PROPERTY I

Abstracts of title, see ABSTRACTS OF TITLE

Accretion or reliction, additions to the soil by, see WATER LAW

Adjoining landowners, see ADJOINING LANDOWNERS

Adverse possession, see ADVERSE POSSESSION

Boundaries, see BOUNDARIES

Common lands, see COMMON LANDS

Condominiums and other common interest communities, see COMMON INTEREST COMMUNITIES

Confusion of goods, see CONFUSION OF GOODS

Constitutional guaranties of rights of property, see CONSTITUTIONAL LAW

Construction of grants, devises, and bequests for life, see REAL PROPERTY CONVEYANCES, WILLS

Conveyances of real property, see REAL PROPERTY CONVEYANCES

Creation and transfer of estates, see REAL PROPERTY CONVEYANCES, WILLS, DESCENT AND DISTRIBUTION, and other specific topics

Decedents' estates, see EXECUTORS AND ADMINISTRATORS

Deeds, see REAL PROPERTY CONVEYANCES

Easements, see EASEMENTS

Escheat, see ABANDONED AND LOST PROPERTY II

Exchange or barter of real property, transfers by way of, see REAL PROPERTY CONVEYANCES XII

Executors and other fiduciaries, waste by, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS

Fences, see FENCES

Found property, see ABANDONED AND LOST PROPERTY I

Gifts, see GIFTS

Good will, see GOOD WILL

Intellectual property, see COPYRIGHTS AND INTELLECTUAL PROPERTY, PATENTS, TRADEMARKS

Intermixture of goods of the same kind belonging to different owners, see CONFUSION OF GOODS

Joint accounts at banks and similar financial institutions, see FINANCE, BANKING, AND CREDIT IV(1)2

Joint ventures, rights of parties, see JOINT VENTURES

Landlord and tenant, see LANDLORD AND TENANT

Life estates by operation of law, see DESCENT AND DISTRIBUTION IV

Lost property, see ABANDONED AND LOST PROPERTY I

Mineral rights, see MINES AND MINERALS

315. PROPERTY

Particular classes of actions relating to property, see EJECTMENT, PARTITION, TRESPASS TO TRY TITLE, and other specific topics

Particular classes of persons and their capacities, rights, and liabilities as to property, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS, DESCENT AND DISTRIBUTION II(C), INFANTS IV, PARENT AND CHILD ¶102, and other specific topics

Particular modes of conveyance or transfer of property, see GIFTS, MORTGAGES AND DEEDS OF TRUST, REAL PROPERTY CONVEYANCES, SALES, and other specific topics

Particular subjects and incidents of property ownership, see ANIMALS, MINES AND MINERALS, and other specific topics

Partition of joint property or property held in common, see PARTITION

Partners' rights in firm property, see PARTNERSHIP

Party walls, see PARTY WALLS

Perpetuities, see PERPETUITIES

Powers, see POWERS

Public lands, see PUBLIC LANDS

Reversions after terms of years merely, see LANDLORD AND TENANT

Spouses, cotenancy between, see MARRIAGE AND COHABITATION

Tenancy by entirety, see MARRIAGE AND COHABITATION

Tenants for years or at will, see LANDLORD AND TENANT

Trusts, see TRUSTS

Unclaimed property, see ABANDONED AND LOST PROPERTY II

Vendor and purchaser, see REAL PROPERTY CONVEYANCES

Water rights, see WATER LAW

Wills, creation of cotenancy by, see WILLS

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- I. IN GENERAL, ¶21–30.
 - II. SUBJECTS OF PROPERTY, ¶31–60.
 - (A) IN GENERAL, ¶31–50.
 - (B) CHANGE OF FORM; CONVERSION, ¶51–60.
 - III. PROPERTY RIGHTS AND INTERESTS, ¶61–300.
 - (A) IN GENERAL, ¶61–80.

III. PROPERTY RIGHTS AND INTERESTS—Cont'd

(B) EXTENT OF SUBJECT PROPERTY, ¶81–100.

(C) PARTICULAR ESTATES AND INTERESTS, ¶101–230.

1. IN GENERAL, ¶101–130.

2. LIFE ESTATES, ¶131–170.

3. REMAINDERS, ¶171–200.

4. REVERSIONS, ¶201–220.

5. GROUND RENTS AND GROUND LEASES, ¶221–230.

(D) RULE IN SHELLEY'S CASE, ¶231–240.

(E) MERGER OF INTERESTS, ¶241–300.

IV. CONCURRENT PROPERTY INTERESTS, ¶301–450.

(A) IN GENERAL, ¶301–320.

(B) UNITIES, ¶321–330.

(C) TERMINATION OR SEVERANCE, ¶331–350.

(D) SURVIVORSHIP, ¶351–360.

(E) MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS, ¶361–420.

(F) RIGHTS, DUTIES, AND LIABILITIES AS TO THIRD PARTIES, ¶421–450.

V. IMPROVEMENTS, ¶451–470.

VI. FIXTURES, ¶471–570.

(A) IN GENERAL, ¶471–490.

(B) PARTICULAR ARTICLES AS FIXTURES, ¶491–510.

(C) SEVERANCE AND REMOVAL OF FIXTURES, ¶511–520.

(D) RIGHTS, DUTIES, AND LIABILITIES OF INTERESTED PARTIES, ¶521–550.

(E) AGREEMENTS AS TO FIXTURES, ¶551–560.

(F) WAIVER OR LOSS OF RIGHTS, ¶561–570.

VII. WASTE, ¶571–600.

VIII. ACQUISITION, TRANSFER, AND DISPOSITION OF PROPERTY IN GENERAL, ¶601–700.

(A) IN GENERAL, ¶601–620.

(B) EXCHANGE OF PERSONAL PROPERTY, ¶621–700.

IX. REMEDIES, ACTIONS, AND PROCEEDINGS, ¶701–883.

(A) IN GENERAL, ¶701–720.

(B) TIME FOR PROCEEDINGS; LIMITATIONS AND LACHES, ¶721–740.

315. PROPERTY**IX. REMEDIES, ACTIONS, AND PROCEEDINGS—Cont'd**

- (C) PERSONS ENTITLED TO SEEK REMEDIES, PERSONS LIABLE, AND PARTIES, ⚖️741–760.
- (D) PLEADING, ⚖️761–780.
- (E) EVIDENCE IN GENERAL, ⚖️781–790.
- (F) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ⚖️791–810.
- (G) WEIGHT AND SUFFICIENCY OF EVIDENCE, ⚖️811–830.
- (H) TRIAL OR HEARING, ⚖️831–860.
- (I) RELIEF, ⚖️861–883.

I. IN GENERAL.

- 21. In general.
- 22. What law governs.
- 23. Relation between state and federal law; preemption.

II. SUBJECTS OF PROPERTY.**(A) IN GENERAL.**

- 31. In general.
- 32. Tangible or intangible property in general.
- 33. Corporeal or incorporeal property in general.
- 34. Real property.
- 35. Personal property.
- 36. — In general.
- 37. — Distinction between real and personal property.
- 38. Movable or immovable property.
- 39. Contract rights.
- 40. Choses or rights in action.
- 41. Biological material.
- 42. Air and wind.

(B) CHANGE OF FORM; CONVERSION.

- 51. In general.
- 52. Severance.
- 53. Manufactured, modular, and mobile structures.

III. PROPERTY RIGHTS AND INTERESTS.**(A) IN GENERAL.**

- 61. In general.
- 62. Ownership, possession, and incidents thereof in general.

III. PROPERTY RIGHTS AND INTERESTS.(Cont'd)

- 63. — In general.
- 64. — Title in general.
- 65. — Legal or equitable ownership or title.
- 66. — Absolute ownership or title.
- 67. — Possession in general.
- 68. — Actual or constructive possession.
- 69. — Natural, corporeal, or civil possession.
- 70. — Seisin.
- 71. — Right to use and enjoy.
- 72. — Right to exclude; ouster.
- 73. Estates in property in general.
- 74. Nominees in general.
- 75. Privity in general.

(B) EXTENT OF SUBJECT PROPERTY.

- 81. In general.
- 82. Appurtenances in general.
- 83. Additions or increments to property in general; accession.
- 84. Extent of personal property.
- 85. — In general.
- 86. — Vehicles.
- 87. — Aircraft and watercraft.
- 88. — Computers.
- 89. Civil fruits.

(C) PARTICULAR ESTATES AND INTERESTS.**1. IN GENERAL.**

- 101. In general.
- 102. Freehold estates and interests in general.
- 103. Fee estates and interests in general; fee simple.
- 104. Qualified, defeasible, conditional, or contingent estates and interests.
- 105. — In general.
- 106. — Vesting in general.
- 107. — Fee estates and interests.
 - (1). In general.
 - (2). Fee simple conditional.
 - (3). Fee simple subject to condition subsequent.
 - (4). Fee simple determinable.
- 108. — Executory interests and limitations.
- 109. Time-delimited estates and interests; estate for years.

315. PROPERTY**III. PROPERTY RIGHTS AND INTERESTS.(Cont'd)**

- 110. Estates tail.
- 111. — In general.
- 112. — Fee tail.
- 113. Rent charge estates.
- 114. Usufructs and usufructuary rights.
- 115. Profits a prendre.
- 116. Chattels real.

2. LIFE ESTATES.

- 131. In general.
- 132. Creation and existence in general.
- 133. Termination.
- 134. Relation of life tenant to remainder holder in general.
- 135. Requirement of security from life tenant.
- 136. Possession of property.
- 137. — In general.
- 138. — Adverse possession by or under life tenant.
- 139. Assertion of lien or charge by life tenant.
- 140. Acquisition of outstanding title or claim by life tenant.
- 141. — In general.
- 142. — Purchase at judicial sale in general.
- 143. — Purchase at mortgage foreclosure sale.
- 144. — Acquisition of tax title.
- 145. Rights, duties, and liabilities of life tenant.
- 146. — In general.
- 147. — Enjoyment and use of property in general.
- 148. — Mines and minerals.
- 149. — Timber.
- 150. — Crops.
- 151. — Income and accretions.
 - (1). In general.
 - (2). Rents and profits.
- 152. — Expenses and losses.
- 153. — Encumbrances.
- 154. — Repairs.
- 155. — Taxes and assessments.
- 156. — Insurance.
- 157. — Rights, duties, and liabilities as to third parties.
- 158. Life estates in personal property.
- 159. — In general.

III. PROPERTY RIGHTS AND INTERESTS.(Cont'd)

- 160. — Creation, existence, and termination.
- 161. — Requirement of security from life tenant.
- 162. — Rights, duties, and liabilities of life tenant.
 - (1). In general.
 - (2). As to third parties.
- 163. — Particular subjects of personal property.
 - (1). In general.
 - (2). Corporate stock.
 - (3). Money.
- 164. Sales and conveyances by life tenants.
- 165. Mortgages by life tenants.
- 166. Leases by life tenants.
- 167. Contracts by life tenants.

3. REMAINDERS.

- 171. In general.
- 172. Requisites and validity in general.
- 173. Vested remainders.
- 174. Contingent remainders.
- 175. Existence pending continuance of preceding estate.
- 176. Acceleration of remainder.
- 177. — In general.
- 178. — Renunciation of preceding estate.
- 179. — Vested remainders.
- 180. — Contingent remainders.
- 181. Acquisition of remainder by tenant of preceding estate.
- 182. Acquisition of preceding estate by remainder holder.
- 183. Bar or defeat of remainder.
- 184. Rights, duties, and liabilities of remainder holders.
- 185. — In general.
- 186. — As to third parties.
- 187. Remainders in personal property.
- 188. — In general.
- 189. — Rights, duties, and liabilities of remainder holder.
 - (1). In general.
 - (2). As to third parties.
- 190. — Particular subjects of property.
- 191. Sales and conveyances by remainder holders.

315. PROPERTY**4. REVERSIONS.**

- 201. In general.
- 202. Distinction between remainders and reversioners.
- 203. Requisites and validity.
- 204. Possibility of reverter.
- 205. Acquisition of reversion by tenant of preceding estate.
- 206. Bar or defeat of reversion.
- 207. Rights, duties, and liabilities of reversioner.
- 208. — In general.
- 209. — As to third parties.
- 210. Reversions in personal property.
- 211. Sales and conveyances by reversioners.

5. GROUND RENTS AND GROUND LEASES.

- 221. In general.
- 222. Requisites and validity of lease.
- 223. Modification and amendment of lease.
- 224. Construction and operation of lease.
- 225. Commencement and duration of lease.
- 226. Amount and payment of rent.

(D) RULE IN SHELLEY'S CASE.

- 231. In general.
- 232. Modification or abolition of rule.

(E) MERGER OF INTERESTS.

- 241. In general.
- 242. Equitable and legal estates.
- 243. Fee and other interests.
- 244. — In general.
- 245. — Life estates and fee interests.
- 246. — Dower and fee interests.
- 247. Remainders and other interests.
- 248. Reversions and other interests.

IV. CONCURRENT PROPERTY INTERESTS.**(A) IN GENERAL.**

- 301. In general.
- 302. Joint tenancy.
- 303. — In general.
- 304. — Creation and existence.
- 305. Tenancy in common.
- 306. — In general.
- 307. — Creation and existence.
- 308. Ownership in indivision.

IV. CONCURRENT PROPERTY INTERESTS.(Cont'd)

- 309. Statutory modification or abolition of interests.

(B) UNITIES.

- 321. In general.
- 322. Time.
- 323. Title.
- 324. Interest.
- 325. Possession.
- 326. Tenancy in common.

(C) TERMINATION OR SEVERANCE.

- 331. In general.
- 332. Method of termination or severance.
- 333. — In general.
- 334. — Agreements and conveyances in general.
- 335. — Transfers involving third persons.
- 336. — Partition.
- 337. — Death.
- 338. Effect of termination or severance.
- 339. — In general.
- 340. — Creation of tenancy in common.

(D) SURVIVORSHIP.

- 351. In general.
- 352. Vesting of rights.
- 353. Forfeiture or other loss of rights.
- 354. — In general.
- 355. — Causing or procuring death.
- 356. Tenancy in common.

(E) MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.

- 361. In general.
- 362. Joint tenancy in general.
- 363. Tenancy in common in general.
- 364. Fiduciary or agency relationship in general.
- 365. Amount of respective shares of cotenants.
- 366. Character and effect of possession of cotenant.
- 367. Disseisin and ouster in general.
- 368. Adverse possession.
- 369. — In general.
- 370. — Necessity of actual ouster.
- 371. — Distinct and exclusive possession.

315. PROPERTY**IV. CONCURRENT PROPERTY INTERESTS.(Cont'd)**

- 372. — Duration and continuity of possession.
- 373. — Hostile character of possession.
- 374. — Possession consistent with title of cotenant.
- 375. — Notice and knowledge of adverse possession.
- 376. — Payment of taxes and making improvements.
- 377. Acquisition of easement by cotenant.
- 378. Assertion of lien or charge.
- 379. Purchase of outstanding title or claim.
- 380. — In general.
- 381. — Nature and extent of rule.
- 382. — Judicial sales.
- 383. — Mortgage foreclosure.
- 384. — Redemption.
- 385. — Contribution to expense.
- 386. Acquisition of tax title.
- 387. — In general.
- 388. — Redemption.
- 389. — Contribution to expense.
- 390. Enjoyment and use of property.
- 391. — In general.
- 392. — Mines and minerals.
- 393. — Water rights.
- 394. — Timber.
- 395. — Crops.
- 396. Conversion of personal property.
- 397. Rents and profits; use and occupation.
- 398. — In general.
- 399. — Excess over proportionate share.
- 400. — Disseisin, adverse possession, and ouster.
- 401. — Extent of liability on accounting.
- 402. — Interest.
- 403. — Lien.
- 404. Repairs.
- 405. Encumbrances.
- 406. Taxes and assessments.
- 407. Services, care, and management by cotenant.
- 408. Expenses and losses.
- 409. Agreements between cotenants.
- 410. Estoppel between cotenants.
- 411. Contribution.

(F) RIGHTS, DUTIES, AND LIABILITIES AS TO THIRD PARTIES.

- 421. In general.
- 422. Joint tenancy in general.
- 423. Tenancy in common in general.
- 424. Dedication to public use.
- 425. Easements.
- 426. Sales and conveyances.
- 427. — In general.
- 428. — Common property in general.
- 429. — Undivided share.
- 430. — Specific amount.
- 431. Mortgages and liens.
- 432. — In general.
- 433. — Foreclosure.
- 434. Pledges.
- 435. Leases.
- 436. Licenses.
- 437. Contracts.
- 438. Torts.
- 439. — In general.
- 440. — Fraud.
- 441. Estoppel.

V. IMPROVEMENTS.

- 451. In general.
- 452. Attachment or affixation; annexation.
- 453. Severability and removability; permanence.
- 454. Intent.
- 455. Particular articles as improvements.
- 456. — In general.
- 457. — Buildings and structures.
- 458. — Machinery, mechanical systems, and equipment.
- 459. — Manufactured, modular, and mobile structures.
- 460. — Wells.
- 461. Rights, duties, and liabilities of interested parties.
- 462. — In general.
- 463. — Life tenants, remainder holders, and reversioners.
- 464. — Concurrent property interests; joint tenancy and tenancy in common.

VI. FIXTURES.**(A) IN GENERAL.**

- 471. In general.

315. PROPERTY**VI. FIXTURES.(Cont'd)**

- 472. Attachment or affixation; annexation.
- 473. — In general.
- 474. — Physical or actual.
- 475. — Constructive.
- 476. Purpose or use.
- 477. Adaptation.
- 478. Severability and removability; permanence.
- 479. Intent.
- 480. Trade fixtures in general.

(B) PARTICULAR ARTICLES AS FIXTURES.

- 491. In general.
- 492. Buildings and structures.
- 493. — In general.
- 494. — Articles attached, affixed, or annexed thereto.
- 495. Machinery, mechanical systems, and equipment.
- 496. Manufactured, modular, and mobile structures.
- 497. Railroads and rolling stock.
- 498. Fences, posts, and gates.
- 499. Signs and billboards.

(C) SEVERANCE AND REMOVAL OF FIXTURES.

- 511. In general.
- 512. Time and manner of severing or removing.
- 513. Effect of severance or removal.

(D) RIGHTS, DUTIES, AND LIABILITIES OF INTERESTED PARTIES.

- 521. In general.
- 522. Persons in family relation.
- 523. Decedents and their personal representatives and heirs.
- 524. Life tenants, remainder holders, and reversioners.
- 525. Landlords and tenants.
- 526. — In general.
- 527. — Trade fixtures.
- 528. — Agricultural fixtures.
- 529. — Domestic or ornamental fixtures.
- 530. Mortgagors and mortgagees.
- 531. — In general.
- 532. — Trade fixtures.
- 533. — Domestic or ornamental fixtures.
- 534. — Buildings and structures.

VI. FIXTURES.(Cont'd)

- 535. — Machinery, mechanical systems, and equipment.
- 536. — Mortgagee of land and mortgagee of goods.
- 537. — Mortgagee of land and vendor or vendee of goods.
- 538. Vendors and purchasers.
- 539. Parties to easements.
- 540. Licensors and licensees.
- 541. Owners and trespassers.
- 542. Sellers and buyers of goods.
- 543. Creditors and purchasers at forced sales.

(E) AGREEMENTS AS TO FIXTURES.

- 551. In general.
- 552. Landlords and tenants.
- 553. Mortgagors and mortgagees.
- 554. Rights of third persons.

(F) WAIVER OR LOSS OF RIGHTS.

- 561. In general.
- 562. Right to sever or remove fixtures.

VII. WASTE.

- 571. In general.
- 572. Application to personal property.
- 573. Permissive waste.
- 574. Equitable waste.
- 575. Particular acts or omissions constituting waste.
- 576. — In general.
- 577. — Water rights.
- 578. — Minerals, mines, and quarries.
- 579. — Agriculture.
- 580. — Trees and timber.
- 581. — Buildings and fixtures.

VIII. ACQUISITION, TRANSFER, AND DISPOSITION OF PROPERTY IN GENERAL.**(A) IN GENERAL.**

- 601. In general.
- 602. Public policy in general.
- 603. Right of alienation in general.
- 604. Manner and modes of transfer in general.
- 605. — In general.
- 606. — Intent to transfer in general.

315. PROPERTY**VIII. ACQUISITION, TRANSFER, AND
DISPOSITION OF PROPERTY IN
GENERAL.**(Cont'd)

- 607. — Sales and conveyances in general.
- 608. — Transfers on death in general.
- 609. — Exchange of property in general.
- 610. Renunciation or disclaimer in general.
- 611. Dismemberment in general.

(B) EXCHANGE OF PERSONAL PROPERTY.

- 621. In general.
- 622. Rescission.
- 623. Warranties.
- 624. Conditional exchange.

**IX. REMEDIES, ACTIONS,
AND PROCEEDINGS.****(A) IN GENERAL.**

- 701. In general.
- 702. Ownership, title, and possession in general.
- 703. Particular interests or estates.
- 704. — In general.
- 705. — Life estates, remainders, and reversions.
- 706. — Ground rents and ground leases.
- 707. Concurrent property interests; joint tenancy and tenancy in common.
- 708. Improvements and fixtures.
- 709. Waste.
- 710. — In general.
- 711. — Estreperment.
- 712. Exchange of personal property.

**(B) TIME FOR PROCEEDINGS; LIMITATIONS
AND LACHES.**

- 721. In general.
- 722. Ownership, title, and possession in general.
- 723. Particular interests or estates.
- 724. — In general.
- 725. — Life estates, remainders, and reversions.
- 726. — Ground rents and ground leases.
- 727. Concurrent property interests; joint tenancy and tenancy in common.
- 728. Improvements and fixtures.
- 729. Waste.
- 730. Exchange of personal property.

**(C) PERSONS ENTITLED TO SEEK REMEDIES,
PERSONS LIABLE, AND PARTIES.**

- 741. In general.
- 742. Ownership, title, and possession in general.
- 743. Particular interests or estates.
- 744. — In general.
- 745. — Life estates, remainders, and reversions.
- 746. — Ground rents and ground leases.
- 747. Concurrent property interests; joint tenancy and tenancy in common.
- 748. Improvements and fixtures.
- 749. Waste.
- 750. — In general.
- 751. — Life tenants, remainder holders, and reversioners.
- 752. — Concurrent property interests; joint tenancy and tenancy in common.
- 753. — Other particular persons and parties.
- 754. Exchange of personal property.

(D) PLEADING.

- 761. In general.
- 762. Ownership, title, and possession in general.
- 763. Particular interests or estates.
- 764. — In general.
- 765. — Life estates, remainders, and reversions.
- 766. — Ground rents and ground leases.
- 767. Concurrent property interests; joint tenancy and tenancy in common.
- 768. Improvements and fixtures.
- 769. Waste.
- 770. Exchange of personal property.

(E) EVIDENCE IN GENERAL.

- 781. In general.
- 782. Evidence concerning ownership, title, and possession in general.
- 783. Evidence concerning concurrent property interests in general.
- 784. Admissibility.
- 785. Degree of proof.

**(F) PRESUMPTIONS, INFERENCES,
AND BURDEN OF PROOF.**

- 791. In general.

315. PROPERTY**IX. REMEDIES, ACTIONS, AND PROCEEDINGS.(Cont'd)**

- 792. Ownership, title, and possession in general.
- 793. Particular interests or estates.
- 794. — In general.
- 795. — Life estates, remainders, and reversions.
- 796. — Ground rents and ground leases.
- 797. Concurrent property interests; joint tenancy and tenancy in common.
- 798. — In general.
- 799. — Disseisin, ouster, and adverse possession.
- 800. — Rents and profits; use and occupation.
- 801. Improvements and fixtures.
- 802. Waste.
- 803. Exchange of personal property.

(G) WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 811. In general.
- 812. Ownership, title, and possession in general.
- 813. Particular interests or estates.
- 814. — In general.
- 815. — Life estates, remainders, and reversions.
- 816. — Ground rents and ground leases.
- 817. Concurrent property interests; joint tenancy and tenancy in common.
- 818. — In general.
- 819. — Disseisin, ouster, and adverse possession.
- 820. — Rents and profits; use and occupation.
- 821. Improvements and fixtures.
- 822. Waste.
- 823. Exchange of personal property.

(H) TRIAL OR HEARING.

- 831. In general.
- 832. Questions of law or fact.
- 833. — In general.
- 834. — Ownership, title, and possession in general.
- 835. — Particular interests or estates.
 - (1). In general.
 - (2). Life estates, remainders, and reversions.

IX. REMEDIES, ACTIONS, AND PROCEEDINGS.(Cont'd)

- (3). Ground rents and ground leases.
- 836. — Concurrent property interests; joint tenancy and tenancy in common.
- 837. — Improvements and fixtures.
- 838. — Waste.
- 839. — Exchange of personal property.
- 840. Instructions.
- 841. — In general.
- 842. — Ownership, title, and possession in general.
- 843. — Particular interests or estates.
 - (1). In general.
 - (2). Life estates, remainders, and reversions.
 - (3). Ground rents and ground leases.
- 844. — Concurrent property interests; joint tenancy and tenancy in common.
- 845. — Improvements and fixtures.
- 846. — Waste.
- 847. — Exchange of personal property.
- 848. Verdict, findings, and conclusions.
- 849. Judgment or other determination.

(I) RELIEF.

- 861. In general.
- 862. Life estates, remainders, and reversions.
- 863. — In general.
- 864. — Protection and improvement of property under order of court.
- 865. — Sale of property under order of court.
- 866. Ground rents and ground leases.
- 867. Concurrent property interests; joint tenancy and tenancy in common.
- 868. — In general.
- 869. — Accounting.
- 870. — Monetary relief; damages.
- 871. Improvements and fixtures.
- 872. — In general.
- 873. — Compensation for improvements.
 - (1). In general.
 - (2). Unjust enrichment and restitution in general.
 - (3). Statutory compensation in general.
 - (4). Good faith of claimant.
 - (5). Mistake as to boundary or location of lands.

315P. PROTECTION OF ENDANGERED PERSONS

**IX. REMEDIES, ACTIONS, AND
PROCEEDINGS.(Cont'd)**

- (6). Lien for improvements.
- (7). Amount of recovery.

- 874. — Damages for removal of fixtures.
- 875. Waste.
- 876. — In general.
- 877. — Accounting.
- 878. — Injunction.
- 879. — Monetary relief; damages.
- 880. — Penalties and forfeitures.
- 881. Exchange of personal property.
- 882. — In general.
- 883. — Monetary relief; damages.

315H. PROSTITUTION

SUBJECTS INCLUDED

- Common lewdness in offering or permitting sexual relations indiscriminately, for gain or other purpose
- Soliciting or inducing another person to engage in an act of prostitution
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

- Children, offenses against under laws peculiar to infants, see **INFANTS**
- Houses of prostitution, keeping, frequenting, etc., see **DISORDERLY HOUSE**
- Living with or accepting earnings of a prostitute, see **HUMAN TRAFFICKING AND SLAVERY**
- Obscene exhibitions, acts, and conduct, see **OBSCENITY**
- Soliciting or inducing another person to become a prostitute or inmate of a house of prostitution, and placing or keeping a person in such a house, see **HUMAN TRAFFICKING AND SLAVERY**
- Transportation of a person for the purpose of prostitution or other immoral purpose, see

HUMAN TRAFFICKING AND SLAVERY

- 10. In general.
- 11. Constitutional, statutory, and regulatory provisions.
- 12. — In general.
- 13. — Purpose.
- 14. — Validity.
- 15. Elements of offenses in general.
- 16. Solicitation.
- 18. Loitering for purposes of prostitution.
- 20. Attempt.
- 21. Defenses.
- 22. Persons liable.
- 23. Indictment and information.
- 24. Evidence.
- 25. — In general.
- 26. — Presumptions and burden of proof.
- 27. — Admissibility.
- 28. — Weight and sufficiency.
- 29. Trial.
- 30. — In general.
- 31. — Questions of law and fact.
- 32. — Instructions.
- 33. Extent of punishment.

**315P. PROTECTION OF
ENDANGERED
PERSONS**

SUBJECTS INCLUDED

- Statutory duties and liabilities of lay persons in the care, protection, and assistance of vulnerable and endangered individuals, including senior citizens and adults incapacitated by physical, mental, emotional, or other disability
- Duty to report breaches of such duties and liabilities attendant thereto
- Administrative officers and employees, administrative actions and investigations, and duties and liabilities related thereto
- Records of abuse, neglect, or other mistreatment by lay persons and issues related thereto

315P. PROTECTION OF ENDANGERED PERSONS

Substantiated findings of abuse against lay persons, registration of abuse and abusers, review and expungement thereof

Crimes against vulnerable adults, prosecutions and propriety of punishment assessed therefor

Protection orders against threatening, disruptive, or criminal conduct between adults

Security or bond to keep the peace, requirements therefor, and liabilities thereon

Protection orders against domestic violence, harassment, and stalking

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Common law duties of care, breaches thereof and liabilities therefor as to vulnerable persons, see FRAUD, HEALTH, NEGLIGENCE, and other topics

Domestic violence, crime and elements of, and prosecutions for, see ASSAULT AND BATTERY

Adult day care, see ASYLUMS AND ASSISTED LIVING FACILITIES

Institutional health care, see HEALTH

Nursing homes and home health care, see HEALTH

Residential facilities for persons with limitations, see ASYLUMS AND ASSISTED LIVING FACILITIES

Respite care, see ASYLUMS AND ASSISTED LIVING FACILITIES

Residential treatment of alcoholics and drug addicts, see CHEMICAL DEPENDENTS

Commitment issues, see MENTAL HEALTH

Protection orders incident to custody disputes, see CHILD CUSTODY

Protection of crime victims and witnesses, see CRIMINAL LAW

Generic criminal law issues, see CRIMINAL LAW

Emotional distress, intentional or negligent infliction, tort of, see DAMAGES

Damages and other procedural aspects of actions for wrongful death, see DEATH

Protection orders incident to divorce, see DIVORCE

Orders for protection of children, see INFANTS

Guardians and guardianships, see GUARDIAN AND WARD, MENTAL HEALTH

Health care, institutional and professional, see HEALTH

Infants and minors, protection of and prosecutions for crimes against, see INFANTS

Substantiated findings of abuse against health professionals, registering and expungement thereof, see HEALTH

Retaliation by employer against employee for reporting abuse of vulnerable and elderly persons, see LABOR AND EMPLOYMENT

Theft from vulnerable or endangered person, see LARCENY

Mental health, institutional and professional care, see MENTAL HEALTH

Discovery protective orders, see PRETRIAL PROCEDURE

Pretrial diversion and other alternative criminal dispositions, see SENTENCING AND PUNISHMENT

Probation, see SENTENCING AND PUNISHMENT

Restitution, see SENTENCING AND PUNISHMENT

Sentence enhancements and guidelines issues, see SENTENCING AND PUNISHMENT

Zoning issues, see ZONING AND PLANNING

I. VULNERABLE OR THREATENED PERSONS IN GENERAL, ¶1–29.

II. SECURITY OR ORDER FOR PEACE OR PROTECTION, ¶30–140.

(A) IN GENERAL, ¶30–39.

(B) GROUNDS IN GENERAL, ¶40–49.

(C) PROCEEDINGS, ¶50–69.

(D) PROTECTION ORDERS IN GENERAL, ¶70–89.

(E) VIOLATIONS, CONTEMPT, AND CONVICTION, ¶90–109.

(F) INTER-JURISDICTIONAL ISSUES, ¶110–119.

(G) APPEAL AND REVIEW, ¶120–139.

(H) COSTS AND FEES, ¶140.

I. VULNERABLE OR THREATENED PERSONS IN GENERAL.

1. In general.

2. Constitutional and statutory provisions.

3. Persons and relationships affected.

4. Elements, grounds, and defenses in general.

315P. PROTECTION OF ENDANGERED PERSONS**I. VULNERABLE OR THREATENED PERSONS
IN GENERAL.**(Cont'd)

- 5. Deprivation, neglect, or abandonment.
- 6. Physical or sexual abuse.
See also SEX OFFENSES.
- 7. Property and finances.
- 8. Other particular conduct.
- 9. Duty and failure to report; immunity.
- 10. Proceedings and prosecution in general.
- 11. Guardian ad litem or next friend.
- 12. Damages, sentence, or other remedy.
- 13. Administrative agencies and proceedings.
- 14. Protective placement and services.
- 15. Costs and fees.

**II. SECURITY OR ORDER FOR
PEACE OR PROTECTION.****(A) IN GENERAL.**

- 30. In general.
- 31. Constitutional and statutory provisions.
- 32. Nature and purpose; public policy.
- 33. Authority and power of courts; discretion.
- 34. Police response and assistance.
- 35. Security for good behavior; peace bonds.
- 36. Persons and relationships affected.

(B) GROUNDS IN GENERAL.

- 40. Grounds and considerations in general.
- 41. Fear and imminence of harm in general; threats.
- 42. Disorderly conduct and breach of the peace.
- 43. Harassment, stalking, and surveillance.
- 44. Criminal, violent, and assaultive conduct in general.
- 45. Domestic abuse and violence.
- 46. Owners, neighbors, and boarders.
- 47. Workplace and employment.
- 48. Other particular cases.

(C) PROCEEDINGS.

- 50. Preliminary, ex parte, and emergency relief.
- 51. Plenary proceedings in general.
- 52. — In general.
- 53. — Alternative resolution and settlement.
- 54. — Parties, right of action, and standing.

**II. SECURITY OR ORDER FOR PEACE
OR PROTECTION.**(Cont'd)

- 55. — Jurisdiction and venue.
- 56. — Pleading, notice, and process.
- 57. — Hearing and determination.
- 58. Evidence.
- 59. — In general.
- 60. — Presumptions and burden of proof.
- 61. — Admissibility.
- 62. — Weight and sufficiency.

(D) PROTECTION ORDERS IN GENERAL.

- 70. Judgment or order in general.
- 71. Opening, vacating, and modifying; new trial.
- 72. Nature, scope, and operation of order.
- 73. — In general.
- 74. — Anti-harassment orders in general.
- 75. — Domestic abuse orders in general.
- 76. — Exclusion and “stay away” orders; buffer zones.
- 77. — “No contact” orders.
- 78. — Other particular orders or relief.
- 79. Commencement and duration in general.
- 80. — In general.
- 81. — Criminal cases.
- 82. Extension, renewal, and conversion.
- 83. Conclusiveness of adjudication; effect.

(E) VIOLATIONS, CONTEMPT, AND CONVICTION.

- 90. Enforcement in general; police.
- 91. Violations and offenses.
- 92. — In general.
- 93. — Elements in general.
- 94. — Notice or knowledge of order.
- 95. — Anti-harassment orders in general.
- 96. — Domestic abuse orders in general.
- 97. — Exclusion and “stay away” orders.
- 98. — “No contact” orders.
- 99. — Other particular orders.
- 100. Nature or degree of violation; contempt.
- 101. Defenses.
- 102. Proceedings in general.
- 103. — In general.
- 104. — Pleading, notice, and process.
- 105. — Evidence.
- 106. — Hearing and determination.
- 107. Judgment or disposition in general.
- 108. Sentence and punishment.

315P. PROTECTION OF ENDANGERED PERSONS**(F) INTER-JURISDICTIONAL ISSUES.**

110. In general.

(G) APPEAL AND REVIEW.

- 120. In general.
- 121. Decisions reviewable.
- 122. Right of review, parties, and estoppel.
- 123. Preservation of grounds of review.
- 124. Perfection; briefs and assignments.
- 125. Record.
- 126. Dismissal; mootness.
- 127. Standards, scope, and questions on review.
- 128. Trial or review de novo.
- 129. Presumptions and burden of proof.
- 130. Discretion of lower court.
- 131. Questions of fact and findings.
- 132. Harmless error and prejudice.
- 133. Determination and remand.
- 134. Peace bonds and warrants.
- 135. Violations, contempt, and conviction.

(H) COSTS AND FEES.

140. In general.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT**SUBJECTS INCLUDED**

- Licensing and regulation of places of, and activities offered for, public amusement and entertainment, including theaters and shows, racing, amusement parks and rides, games, sports and athletic activities, skiing, ice skating and winter activities, swimming and diving, dancing and sexually oriented entertainment
- Taxes and fees related to the licensing of, admission to, or services provided by the licensee or proprietor of, a covered activity or event
- Right of admission or accommodation to places of, and activities offered for, public amusement and entertainment, including exclusion, ejection or control of conduct of

persons attending, and ticket sales, pricing and scalping

Liability of owners and operators of public amusements and entertainment for personal injuries sustained by persons attending, whether as a participant or spectator, including duty, standard of care, proximate cause, injury, defenses, mitigating circumstances and statutory limitations of liability, as well as procedural aspects of such actions

Liability of owners and operators of public amusements and entertainment for loss of or injury to personal property of persons attending

Criminal offenses and prosecutions peculiar to places of, and activities offered for, public amusement and entertainment

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Licensing and regulation of fairs, and liability for personal injuries of persons attending, see AGRICULTURE ⇨5

Injuries to participants or spectators of unauthorized racing upon public highways, see AUTOMOBILES ⇨168(10)

Licensing and regulation of motor vehicles for purposes of transportation, and liability for injuries arising from the operation and use of such vehicles, see AUTOMOBILES

Licensing and regulation of ski lifts and similar devices, and liability for injuries to passengers, see CARRIERS and NEGLIGENCE

Discrimination as to admission or accommodations by reason of race, color, etc., see CIVIL RIGHTS

Governmental immunity of the owner or operator of a place of public amusement or entertainment for injuries to persons attending, see COUNTIES, MUNICIPAL CORPORATIONS, STATES and other “government” topics

Amount, elements and measure of damages for personal injuries to participants or spectators, see DAMAGES and DEATH

Emotional distress or mental anguish resulting from exclusion, ejection or the exercise of control of persons attending, see DAMAGES III(A)2

Wrongful death actions, procedural aspects of, see DEATH

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT

Regulation of fireworks, and liability for injuries from the use of, see **EXPLOSIVES**

Injuries caused by food, see **FOOD**

Licensing and regulation of gambling establishments and implements, and betting on races or other contests, see **GAMING**

Children, special regulations as to employment or admission, see **INFANTS**

Federal taxes on admissions to cabarets, see **INTERNAL REVENUE** ⚭4803

Accrual, computation and tolling of statutes of limitations on actions for personal injuries to persons attending, see **LIMITATION OF ACTIONS**

Liability of participants or spectators for injuries to co-participants or co-spectators, see **NEGLIGENCE X**

Premises liability of residential landowners for recreational injuries, see **NEGLIGENCE XVII**

Recreational use immunity, see **NEGLIGENCE XVII(F)**

Releases of liability, arising out of personal injuries to participants or spectators, executed after the injury, see **COMPROMISE, SETTLEMENT, AND RELEASE**

Administrative searches of licensed and regulated facilities, see **SEARCHES AND SEIZURES**

Injuries arising out of the use of ships, boats and other watercraft for purposes of transportation, and injuries to passengers aboard cruise ships, see **SHIPPING**

“Sales” and other taxes not related to the licensing of, admission to, or the services provided by the licensee of, a covered activity or event, see **TAXATION**

Limitations on the location of, or use of land for, public amusements and entertainment pursuant to zoning and planning statutes or regulations, see **ZONING AND PLANNING**

I. IN GENERAL, ⚭1–11.

II. LICENSING AND REGULATION, ⚭12–64.

(A) IN GENERAL, ⚭12–49.

(B) TAXES AND FEES, ⚭50–64.

III. RIGHT OF ADMISSION OR ACCOMMODATION; TICKETS, ⚭65–74.

IV. PERSONAL INJURIES, ⚭75–169.

(A) IN GENERAL, ⚭75–119.

IV. PERSONAL INJURIES—Cont’d

(B) DEFENSES, MITIGATING CIRCUMSTANCES AND STATUTORY LIMITATIONS OF LIABILITY, ⚭120–139.

(C) ACTIONS, ⚭140–169.

V. LOSS OF OR INJURY TO PROPERTY, ⚭170.

VI. CRIMINAL RESPONSIBILITY, ⚭171–177.

I. IN GENERAL.

1. In general.
2. What law governs.
3. Preemption.
4. Constitutional, statutory and regulatory provisions.
5. — In general.
6. — Motion pictures in general.
7. — Racing in general.
8. — Taxes and fees.
9. — Sexually oriented entertainment.
 - (1). In general.
 - (2). Dancing and other performances.
 - (3). Motion pictures, videos and games.
10. — Personal injuries.
11. — Retroactive operation.

II. LICENSING AND REGULATION.

(A) IN GENERAL.

12. In general.
13. Administrative agencies and proceedings in general.
14. Judicial review or intervention in general.
15. Concerts, performances, theaters and shows in general.
16. — In general.
17. — Motion pictures in general.
18. — Animal performances and shows.
19. — Administrative agencies and proceedings.
20. — Judicial review or intervention.
21. Amusement parks and rides.
22. — In general.
23. — Administrative agencies and proceedings.
24. — Judicial review or intervention.
25. Games, sports, athletic activities and contests in general.
26. — In general.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT**II. LICENSING AND REGULATION.(Cont'd)**

- 27. — Boxing, wrestling and martial arts.
- 28. — Games of chance and skill; arcade and video games.
Excludes games that are predominantly athletic in nature.
- 29. — Administrative agencies and proceedings.
- 30. — Judicial review or intervention.
- 31. Racing in general.
- 32. — In general.
- 33. — Horse and dog racing.
- 34. — Motor vehicles.
- 35. — Administrative agencies and proceedings.
 - (1). In general.
 - (2). Horse and dog racing.
- 36. — Judicial review or intervention.
 - (1). In general.
 - (2). Horse and dog racing.
- 37. Skiing, ice skating and winter activities.
- 38. — In general.
- 39. — Skiing and snowboarding.
Ski lifts, see CARRIERS.
- 40. — Administrative agencies and proceedings.
- 41. — Judicial review or intervention.
- 42. Swimming, bathing and other water activities.
- 43. Social dancing and dance halls.
- 44. Sexually oriented entertainment.
- 45. — In general.
- 46. — Dancing and other performances.
- 47. — Motion pictures, videos and games.
- 48. — Administrative agencies and proceedings.
- 49. — Judicial review or intervention.

(B) TAXES AND FEES.*See also TAXATION and INTERNAL REVENUE.*

- 50. In general.
- 51. Concerts, performances, theaters and shows in general.
- 52. Amusement parks and rides.
- 53. Games, sports, athletic activities and contests in general.
- 54. — In general.
- 55. — Games of chance and skill; arcade and video games.
Excludes games that are predominantly athletic in nature.

II. LICENSING AND REGULATION.(Cont'd)

- 56. Racing in general.
- 57. Skiing, ice skating and winter activities.
- 58. Swimming, bathing and other water activities.
- 59. Social dancing and dance halls.
- 60. Sexually oriented entertainment.
- 61. Administrative agencies and proceedings.
- 62. Judicial review or intervention.

III. RIGHT OF ADMISSION OR ACCOMMODATION; TICKETS.

- 65. In general.
- 66. Right of owner or operator to exclude, eject or control conduct of persons attending.
- 67. Remedy for exclusion, ejection or exercise of control by owner or operator.
Personal injuries resulting from exclusion, ejection or the exercise of control, see IV. Emotional distress or mental anguish resulting from exclusion, ejection or the exercise of control, see DAMAGES III(A)2.
- 68. Sale, resale or transfer of tickets in general.
- 69. — In general.
- 70. — Ticket pricing; scalping.
See also ¶176.
- 71. Season tickets.
- 72. Administrative agencies and proceedings.
- 73. Judicial review or intervention.

IV. PERSONAL INJURIES.**(A) IN GENERAL.**

- 75. In general.
- 76. Care required in general; insuring safety.
- 77. Duty to licensees or invitees in general.
- 78. Duty affected by charging for admission in general.
- 79. Concerts, performances, theaters and shows in general.
- 80. Amusement parks in general.
- 81. Games, sports, athletic activities and contests in general.
- 82. — In general.
- 83. — Baseball and softball.
- 84. — Golf.
- 85. — Boxing, wrestling and martial arts.
- 86. — Roller skating.
- 87. — Games of chance and skill; arcade and video games.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT**IV. PERSONAL INJURIES.(Cont'd)**

- (1). In general.
- (2). Bowling.
- 88. Riding and racing in general.
- 89. — In general.
- 90. — Horses and other animals.
Liability of stables and other riding facilities, see topic ANIMALS.
- 91. — Motor vehicles.
Injuries to participants or spectators of unauthorized racing upon public highways, see AUTOMOBILES ¶168(10).
- 92. — Amusement rides and devices.
- 93. Skiing, ice skating and winter activities.
- 94. — In general.
- 95. — Skiing and snowboarding.
Liability of facility operator or premises owner for injuries to passengers on ski lifts, see CARRIERS. Skiing or snowboarding safety statutes, see ¶137.
- 96. — Ice skating and hockey.
- 97. Swimming, bathing and other water activities.
- 98. — In general.
- 99. — Diving.
- 100. Social dancing and dance halls.
- 101. Spectators and other non-participants, injuries to.
- 102. — In general.
- 103. — Exterior grounds in general.
- 104. — Walkways, doors, entryways and exits.
- 105. — Buildings, structures, fixtures and appliances in general.
- 106. — Floors.
Injuries from falls on floors used for social dancing, see ¶100.
- 107. — Aisles, seats, balconies and bleachers.
- 108. — Steps, stairs and ramps.
- 109. — Injury from game, performance or activity.
 - (1). In general.
 - (2). Balls, bats and pucks.
- 110. — Injury from assaults and willful acts of participants and performers.
Liability of participants, performers or employees, see ASSAULT AND BATTERY, LABOR AND EMPLOYMENT and NEGLIGENCE.
- 111. — Injury from crowds, other spectators or non-participants.
Liability of members of crowd, other spectators or non-participants, see ASSAULT AND BATTERY and NEGLIGENCE.
- 112. — Lighting of activity or facility.

IV. PERSONAL INJURIES.(Cont'd)

- 113. — Off-premises injuries.
- 114. Persons liable and persons entitled to sue.
- (B) DEFENSES, MITIGATING CIRCUMSTANCES AND STATUTORY LIMITATIONS OF LIABILITY.**
Duty to mitigate damages, see DAMAGES.
- 120. In general.
- 121. Plaintiff's conduct or fault.
- 122. — In general.
- 123. — Spectators and other non-participants, injuries to.
- 124. Fault of third persons.
- 125. Assumption of risk.
Statutory limitations of liability, see ¶133.
- 126. — In general.
- 127. — Particular cases.
- 128. — Spectators and other non-participants, injuries to.
- 129. Pre-injury releases.
Post-injury releases, see COMPROMISE, SETTLEMENT, AND RELEASE.
- 130. — In general.
- 131. — Operation and effect of statutory provisions.
- 132. Immunity.
Immunity pursuant to safety statutes and other statutory limitations of liability, see ¶133.
- 133. Statutory limitations of liability.
- 134. — In general.
- 135. — Equine activity.
- 136. — Roller skating.
- 137. — Skiing and snowboarding.
- (C) ACTIONS.**
- 140. In general.
- 141. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 142. Parties.
- 143. Pleading.
- 144. Evidence in general.
- 145. Burden of proof and presumptions.
- 146. — In general.
- 147. — Spectators and other non-participants, injuries to.
- 148. Res ipsa loquitur.
- 149. — In general.
- 150. — Spectators and other non-participants, injuries to.
- 151. Admissibility of evidence.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT**IV. PERSONAL INJURIES.**(Cont'd)

- 152. — In general.
- 153. — Spectators and other non-participants, injuries to.
- 154. Weight and sufficiency of evidence.
- 155. — In general.
- 156. — Spectators and other non-participants, injuries to.
- 157. — Defenses and mitigating circumstances.
- 158. — Statutory limitations of liability.
- 159. Questions of fact.
- 160. — In general.
- 161. — Spectators and other non-participants, injuries to.
- 162. — Defenses and mitigating circumstances.
- 163. — Statutory limitations of liability.
- 164. Instructions.
- 165. Verdict and findings.

V. LOSS OF OR INJURY TO PROPERTY.

- 170. In general.

VI. CRIMINAL RESPONSIBILITY.

- 171. In general.
- 172. License violations in general.
- 173. Social dancing and dance halls.
- 174. Sexually oriented entertainment.
- 175. Racing and racetracks.
- 176. Ticket pricing; scalping.
See also ¶70.
- 177. Prosecution and punishment.

316E. PUBLIC ASSISTANCE**SUBJECTS INCLUDED**

Assistance for needy, aged, blind, or disabled persons

Assistance for needy families

Food stamps and related programs

Benefits for temporarily disabled workers

Responsibility for aid under poor laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Asylums for indigent children, aged persons, etc., *see* ASYLUMS AND ASSISTED LIVING FACILITIES

Child and foster care providers, *see* INFANTS

Medicare, Medicaid, and other medical assistance, *see* HEALTH III

Mentally deficient or ill persons, care when indigent, *see* MENTAL HEALTH

Particular personal relations, duties incident to, *see* MARRIAGE AND COHABITATION, PARENT AND CHILD, and other specific topics

Private pension systems for employees, *see* LABOR AND EMPLOYMENT

Public employees' retirement and pensions, *see* MUNICIPAL CORPORATIONS, STATES, UNITED STATES, and other specific topics

Railroad employees' retirement benefits, *see* LABOR AND EMPLOYMENT

Social security old age, survivors, and disability benefits, *see* SOCIAL SECURITY

Unemployment compensation, *see* UNEMPLOYMENT COMPENSATION

- I. PROGRAMS IN GENERAL, ¶1-79.
- II. FAMILY ASSISTANCE, ¶80-149.
- III. FOOD AND NUTRITION ASSISTANCE, ¶150-169.
- IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS, ¶170-199.
- V. STATE BENEFITS FOR TEMPORARY DISABILITY OF WORKERS, ¶200-209.
- VI. STATE AND LOCAL RESPONSIBILITY FOR AID UNDER "POOR LAWS", ¶210-219.

I. PROGRAMS IN GENERAL.

- 1. In general.
- 2. Constitutional and statutory provisions.
- 3. — In general.
- 4. — Purpose.
- 5. — Construction.
- 6. — Validity.
- 7. — Retrospective operation.
- 8. What law governs.
- 9. Preemption.

316E. PUBLIC ASSISTANCE**I. PROGRAMS IN GENERAL.(Cont'd)**

10. Obligation of support in general.
11. — In general; right to support.
12. — Obligation of public authorities.
13. — Obligation of relatives and third parties.
14. Relief and welfare funds; disbursements.
15. State plans and conformity to federal standards in general.
16. — In general.
17. — Waivers; implementation of experimental projects.
18. — Proceedings and judicial review; actions.
19. Administration of programs.
20. — In general.
21. — Federal agencies, boards, and officers.
22. — State and local agencies, boards, and districts.
 - (1). In general.
 - (2). Officers and employees.
 - (3). Authority, powers, and duties.
23. Reporting requirements; records.
24. Rules and regulations.
25. Programs.
26. — In general.
27. — Programs of general assistance.
28. — Housing and shelter allowances; moving expenses.
29. — Energy assistance.
30. — Work programs in general.
31. — Emergency assistance.
 - (1). In general.
 - (2). Energy assistance.
32. — Other programs or allowances.
33. Eligibility in general.
34. — In general.
35. — Residency.
36. — Aliens.
37. — Resources.
 - (1). In general.
 - (2). Income in general.
 - (3). Income allowances.
 - (4). Public benefits.
 - (5). Real property and other assets.
38. — Disqualifying factors; duty of applicants to act or seek other assistance.
39. Work requirements.

I. PROGRAMS IN GENERAL.(Cont'd)

40. Education or training in lieu of work.
41. Sterilization or birth control as condition for receipt of benefits.
42. Amount of assistance.
43. Payment; payees.
44. Retroactive payment of benefits.
45. Replacement of lost benefits.
46. Reduction, termination, or temporary termination of benefits.
47. — In general.
48. — Misconduct or noncooperation; failure to report.
 - (1). In general.
 - (2). Work or education requirements.
 - (3). Crimes.
49. Durational limitations.
50. Private providers; reimbursement.
51. Administrative proceedings.
52. — In general.
53. — Application for benefits.
54. — Investigations and interviews.
55. — Time for hearing.
56. — Notice and hearing.
57. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
58. — Findings and determination.
59. — Reopening, rehearing, and reconsideration.
60. — Administrative review.
61. Judicial review; actions.
62. — In general.
63. — Decisions reviewable; exhaustion of administrative remedies.
64. — Time for proceedings.
65. — Record.
66. — Scope of review.
67. — Harmless error.
68. — Further review.
69. — Findings and determination.
70. Recovery from recipient or estate; set-offs; liens.
71. Recovery from others.
72. Costs and attorney fees.
73. Offenses and prosecutions.
74. Fines and penalties.

316E. PUBLIC ASSISTANCE**II. FAMILY ASSISTANCE.**

- 80. In general.
- 81. Constitutional and statutory provisions.
- 82. — In general.
- 83. — Purpose.
- 84. — Construction.
- 85. — Validity.
- 86. — Retrospective operation.
- 87. What law governs.
- 88. Preemption.
- 89. Relief and welfare funds; disbursement.
- 90. State plans and conformity to federal standards.
- 91. — In general.
- 92. — Conformity with eligibility and benefit standards.
- 93. — Proceedings and review; actions.
- 94. — Penalties.
- 95. Administration of programs.
 - (1). In general.
 - (2). Federal agencies, boards, and officers.
 - (3). State and local agencies, boards, and districts.
 - (4). — In general.
 - (5). — Officers, agents, and employees.
 - (6). — Authority, powers, and duties.
- 96. Reporting requirements; records.
- 97. Rules and regulations.
- 98. Federally assisted aid for families.
- 99. — In general.
- 100. — Eligibility.
 - (1). In general.
 - (2). Residency.
 - (3). Aliens.
 - (4). Young parents.
 - (5). Custody and support.
 - (6). — In general.
 - (7). — Caretakers.
 - (8). — Absence or incapacity of parent; deprivation of support.
 - (9). Assistance units; lodgers.
 - (10). Remarriage; presence of person in loco parentis.
 - (11). Absence of minor from home.
 - (12). Unborn children; age of children.

II. FAMILY ASSISTANCE.(Cont'd)

- (13). Disqualifying factors; duty of recipient to act.
- (14). Resources.
- (15). — In general.
- (16). — Income in general.
- (17). — Income allowances.
- (18). — Public benefits.
- (19). — Real property and other assets.
- 101. — Amount of assistance.
 - (1). In general.
 - (2). Child support collections.
 - (3). Family income; effect of work incentives and other aid.
 - (4). Needs of family unit and members.
 - (5). Size of family unit; increases in family size; consolidated or flat grants.
 - (6). Other public benefits.
 - (7). Cost of living adjustments.
- 102. Work or education requirements; incentive programs, unemployment and disability.
- 103. Sterilization or birth control as condition for receipt of benefits.
- 104. Preschool and day care allowances.
- 105. Other programs and benefits.
- 106. Emergency assistance.
- 107. Payment; payees.
- 108. Retroactive payment of benefits.
- 109. Replacement of lost benefits.
- 110. Reduction, termination, or temporary termination of benefits.
- 111. — In general.
- 112. — Misconduct or noncooperation.
 - (1). In general.
 - (2). Work or education requirements.
 - (3). Crimes.
- 113. Durational limitations.
- 114. — In general.
- 115. — Hardship exception.
- 116. Administrative proceedings.
- 117. — In general.
- 118. — Application for benefits.
- 119. — Investigations and interviews.
- 120. — Notice and hearing.
- 121. — Evidence.

316E. PUBLIC ASSISTANCE**II. FAMILY ASSISTANCE.(Cont'd)**

- (1). In general.
- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
- 122. — Findings and determination.
- 123. — Reopening, rehearing and reconsideration.
- 124. — Administrative review.
- 125. Judicial review; actions.
- 126. — In general.
- 127. — Decisions reviewable; exhaustion of administrative remedies.
- 128. — Scope of judicial review.
- 129. — Findings and determination.
- 130. Recovery from recipient or estate; set-offs; liens.
- 131. Recovery from others.
- 132. Costs and attorney fees.
- 133. Offenses and prosecutions.
- 134. Fines and penalties.

III. FOOD AND NUTRITION ASSISTANCE.

- 150. In general.
- 151. Constitutional and statutory provisions.
- 152. Food stamp program.
- 153. — In general.
- 154. — Eligibility and disqualification of recipients.
- 155. — Eligibility and disqualification of providers.
- 156. Aid to consumers.
- 157. Meal and nutrition programs.
- 158. Other programs and allowances.
- 159. Administrative proceedings.
- 160. Judicial review; actions.
- 161. Costs and attorney fees.
- 162. Offenses and prosecutions.
- 163. Fines and penalties.

IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS.

- 170. In general.
- 171. Obligation to support in general; right to support.
- 172. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Purpose.
 - (3). Construction.

IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS.(Cont'd)

- (4). Validity.
- (5). Retrospective operation.
- 173. Relief and welfare funds; disbursements.
- 174. State plans and conformity to federal standards.
- 175. Administration of programs.
- 176. Rules and regulations.
- 177. State assistance to blind and disabled.
- 178. — In general.
- 179. — Vocational rehabilitation assistance.
- 180. — In-home services and allowances.
- 181. — Eligibility in general.
 - (1). In general.
 - (2). Residency.
 - (3). Aliens.
 - (4). Resources.
 - (5). — In general.
 - (6). — Income in general.
 - (7). — Deductions and allowances in general.
 - (8). — Other benefits.
 - (9). — Real property and other assets.
- 182. — Other disqualifiers from receipt or continued receipt of benefits.
 - (1). In general.
 - (2). Imprisonment, conviction, parole or probation status, or flight.
- 183. — Amount of assistance.
- 184. — Payment; payees.
- 185. — Administrative proceedings.
 - (1). In general.
 - (2). Application for benefits.
 - (3). Time for proceedings.
 - (4). Notice and hearing.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Weight and sufficiency.
 - (9). Findings and determination.
 - (10). Reopening; rehearing and reconsideration.
 - (11). Administrative review.
- 186. — Judicial review; actions.

316E. PUBLIC ASSISTANCE**IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS.**(Cont'd)

- (1). In general.
- (2). Decisions reviewable; exhaustion of remedies.
- (3). Proceedings for review; record.
- (4). Scope of judicial review.
- (5). Findings and determination.
- (6). Further review.
- 187. State old age assistance.
- 188. — In general.
- 189. — Eligibility.
- 190. — Proceedings and review.
- 191. Private providers; reimbursement.
- 192. Recovery of assistance paid; setoffs; liens.
- 193. Recovery of interim assistance paid.
- 194. Costs and attorney fees.
- 195. Offenses and prosecutions.
- 196. Fines and penalties.

V. STATE BENEFITS FOR TEMPORARY DISABILITY OF WORKERS.

- 200. In general.
- 201. Coverage of statutes; right to benefits.
- 202. — In general.
- 203. — Nature and extent of disability.
- 204. — Existence and duration of employment.
- 205. Private or voluntary plans.
- 206. Proceedings.
- 207. Payment, setoff, recoupment, and liens.

VI. STATE AND LOCAL RESPONSIBILITY FOR AID UNDER "POOR LAWS".

- 210. In general.
- 211. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Purpose.
 - (3). Construction.
 - (4). Validity.
 - (5). Retrospective operation.
- 212. Who are paupers and indigent persons.
- 213. Duty of relief under poor laws in general.
- 214. Poor law districts, other government entities, and officers.
- 215. Legal settlements.
- 216. Removal.

VI. STATE AND LOCAL RESPONSIBILITY FOR AID UNDER "POOR LAWS".(Cont'd)

- 217. Obligation of poor districts and other government entities for support and services.
- 218. Recovery for support and services against other districts, government entities, and individuals.
- 219. Offenses and prosecutions.

316H. PUBLIC CONTRACTS**SUBJECTS INCLUDED**

Contracts, other than employment, between government bodies and private entities; intergovernmental contracts

The manner of letting and executing such contracts, their validity, and their construction, operation, performance, and breach

Assignment of public contracts or rights thereunder

Contractors' bonds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Individual employment contracts for government employees, see particular governmental topic

Collective employment contracts for government employees, see LABOR AND EMPLOYMENT

Private contracts with nongovernmental entities, such as private colleges or schools, see EDUCATION

Sale or disposition of real property, see particular governmental topic

Leases of property, see particular governmental topic

I. IN GENERAL, ⌘100–119.

II. BIDDING AND BID PROTESTS, ⌘120–179.

III. FORMATION OF CONTRACT, ⌘180–199.

IV. CONTRACTOR BONDS, ⌘200–249.

316H. PUBLIC CONTRACTS

- V. CONSTRUCTION AND OPERATION, \S 250–299.
- VI. ASSIGNMENT OR SUBCONTRACT, \S 300–309.
- VII. MODIFICATION, \S 310–319.
- VIII. RESCISSION, TERMINATION, OR ABANDONMENT, \S 320–339.
- IX. PERFORMANCE OR BREACH, \S 340–399.
- X. RIGHTS AND REMEDIES OF CONTRACTORS, \S 400–429.
- XI. RIGHTS AND REMEDIES OF THIRD PARTIES, \S 430–449.
- XII. RIGHTS AND REMEDIES OF GOVERNMENT ENTITY, \S 450–459.
- XIII. CRIMES AND PROSECUTIONS, \S 460.

I. IN GENERAL.

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. What law governs.
- 103. Preemption.
- 104. Authority and capacity to contract in general.
- 105. Authority and capacity of particular governmental bodies to contract.
- 106. Powers of officers to contract.
- 107. Individual interest of contracting officer or body; conflict of interest.
- 108. Power to bind successors.
- 109. Appropriation or provision for payment as prerequisite of contract.
- 110. Term or duration of contract.

II. BIDDING AND BID PROTESTS.

- 120. In general.
- 121. Constitutional and statutory provisions.
- 122. Necessity for submission to competition in general.
- 123. Power to let contract without submission to competition or to dispense with requirements.
- 124. Request for bids.
- 125. — In general; advertising.
- 126. — Specifications.
- 127. Bidders.
- 128. — In general.
- 129. — Preferences and set-asides.
- 130. — Conditions and restrictions on bidders.

II. BIDDING AND BID PROTESTS.(Cont'd)

- 131. — Debarment and suspension of bidders.
- 132. Bids.
- 133. — In general.
- 134. — Form and requisites; responsiveness.
- 135. — Subbids.
- 136. — Time for making bid.
- 137. — Amendment, correction, or withdrawal.
- 138. — Deposit or other security.
- 139. Acceptance or rejection.
- 140. — In general.
- 141. — Evaluation process.
- 142. — Good faith; fairness.
- 143. — Requests for verification; confirmation.
- 144. — Time for opening bids.
- 145. — Time for approving or rejecting bids as proper vel non.
- 146. — Reconsideration.
- 147. Determinative factors in making award.
- 148. — In general.
- 149. — Lowest bid.
- 150. — Reliability and responsibility of bidder.
- 151. — Character of materials and mode of work.
- 152. Award.
- 153. — In general.
- 154. — Time for making award.
- 155. — Operation and effect.
- 156. — Failure to enter into contract; cancellation of solicitation.
- 157. Rights and remedies of disappointed bidders; bid protests.
- 158. — In general.
- 159. — Administrative procedures in general.
- 160. Judicial remedies and review.
- 161. — In general.
- 162. — Conditions precedent; exhaustion of administrative remedies.
- 163. — Parties; standing.
- 164. — Scope of review.
- 165. — Time for proceedings.
- 166. — Evidence.

316H. PUBLIC CONTRACTS**II. BIDDING AND BID PROTESTS.**(Cont'd)

- 167. — Determination and disposition.
- 168. — Recovery of bid preparation costs.

III. FORMATION OF CONTRACT.

- 180. In general.
- 181. Constitutional and statutory provisions.
- 182. Express contracts in general.
- 183. Provisions required by law or regulation.
- 184. Formal requisites.
- 185. Necessity of writing.
- 186. Validity and sufficiency of contract.
- 187. — In general.
- 188. — Manner of making contract.
- 189. — Effect of partial invalidity.
- 190. — Presumption in favor of validity.
- 191. Implied contracts.
- 192. — In general.
- 193. — Subject matter.
- 194. Unauthorized or illegal contracts.
- 195. — In general.
- 196. — Ratification.

IV. CONTRACTOR BONDS.

- 200. In general.
- 201. Constitutional and statutory provisions.
- 202. Necessity.
- 203. Power to require.
- 204. Requisites and sufficiency in general.
- 205. Qualification and approval of surety.
- 206. Construction of bond and surety's liability in general.
- 207. Performance of work, guaranty, and repairs.
- 208. Payment for labor and materials in general.
- 209. Claims and persons secured.
- 210. — In general.
- 211. — Labor or services in general.
- 212. — Materials and supplies in general.
- 213. — Use or incorporation in work.
- 214. — Equipment, rental or repair.
- 215. — Loans or advances.
- 216. — Subcontractors.
- 217. — Sub-subcontractors and remote materialmen.
- 218. — Assignees.
- 219. — Extra work, changes, and repairs.
- 220. — Interest, costs, and taxes.

IV. CONTRACTOR BONDS.(Cont'd)

- 221. — Liabilities incurred for damages or to third persons.
- 222. — Supplies or property purchased or rented.
- 223. Actions on bonds.
- 224. — In general.
- 225. — Jurisdiction and venue.
- 226. — Conditions precedent.
- 227. — Notice of claim.
 - (1). In general.
 - (2). Service or presentation; timeliness.
 - (3). Form and sufficiency.
 - (4). Waiver and estoppel.
- 228. — Defenses.
 - (1). In general.
 - (2). Estoppel.
- 229. — Time for proceedings.
- 230. — Persons entitled to sue.
- 231. — Parties.
- 232. — Persons liable.
- 233. — Pleading.
- 234. — Evidence.
- 235. — Questions of fact or law.
- 236. — Amount of recovery.
- 237. — Costs and fees; interest.
- 238. — Set-offs, deductions, and credit.
- 239. Rights and remedies of sureties.

V. CONSTRUCTION AND OPERATION.

- 250. In general.
- 251. What law governs.
- 252. Application of general rules of construction in general.
- 253. — In general.
- 254. — Construction against government in general.
- 255. — Construction as a whole.
- 256. Deference to agency interpretation.
- 257. Ambiguity in general.
- 258. Patent ambiguity doctrine; duty to inquire before bidding.
- 259. Extrinsic evidence.
- 260. Parties.
- 261. Third-party beneficiaries.
- 262. Subject-matter.
- 263. — In general.
- 264. — Bailments and leases.

316H. PUBLIC CONTRACTS**V. CONSTRUCTION AND OPERATION.**(Cont'd)

- 265. — Construction of buildings and other public works.
- 266. — Goods sold or furnished.
- 267. — Provision of services.
- 268. — Title to goods or property.
- 269. Place and time of performance.
- 270. Conditions.
- 271. Compensation.
- 272. — In general.
- 273. — Cost-plus contracts.
- 274. — From special fund or appropriation.
- 275. — From proceeds of assessments or special taxes.
- 276. Extra costs or expenses in general.
- 277. Changed or unexpected conditions.
- 278. Change in plans.
- 279. Defective plans and mistakes.
- 280. Representations and specifications misleading contractor.
- 281. Conduct of contractor and third persons; relation to subcontractor.
- 282. Repairs and tests.
- 283. Taxes and interest.
- 284. Liquidated damages.
- 285. Time element; consequences of delay.
- 286. Termination or modification of original contract.
- 287. Preserving right to claim for extras; estoppel.

VI. ASSIGNMENT OR SUBCONTRACT.

- 300. In general.
- 301. Assignability; government approval.
- 302. Filing requirement.
- 303. Soliciting bids for subcontracting; "bid chiseling".

VII. MODIFICATION.

- 310. In general.
- 311. Acts constituting.
- 312. Authority of officer to modify.
- 313. Authority of government entity to modify.
- 314. Material amendments doctrine.
- 315. Consideration.
- 316. Validity of assent.
- 317. Operation and effect.

VIII. RESCISSION, TERMINATION, OR ABANDONMENT.

- 320. In general.
- 321. Constitutional and statutory provisions.
- 322. Time of termination; waiver or loss of right.
- 323. Grounds in general.
- 324. Termination for default.
- 325. Notice to cure.
- 326. Operation and effect.

IX. PERFORMANCE OR BREACH.

- 340. In general.
- 341. Constitutional and statutory provisions.
- 342. Contractor's responsibility for nonperformance by subcontractor.
- 343. Implied duties and warranties.
- 344. — In general.
- 345. — Good faith and fair dealing.
- 346. — Cooperation.
- 347. Sufficiency of performance in general.
- 348. Excuses for nonperformance in general.
- 349. Tender of performance.
- 350. Acceptance of performance; approval or certificate of architect or engineer.
- 351. Waiver of rights under contract.
- 352. Reletting contract on failure of performance.
- 353. Completion of contract by government entity or surety in general.
- 354. Delivery.
- 355. Leases to government entity.
- 356. Alternative dispute resolution; arbitration of disputes.
- 357. Decisions of contracting officers on contract disputes.
- 358. — In general.
- 359. — Mistake.
- 360. — Construction of contracts.
- 361. — Time for filing claim.
- 362. — Failure to make decision.
- 363. — Conclusiveness of decision.
 - (1). In general.
 - (2). Exceptions; fraud or mistake.
- 364. — Review.
 - (1). In general.
 - (2). Necessity of claim.
 - (3). What constitutes a "claim".
 - (4). Boards of contract appeals.

316H. PUBLIC CONTRACTS**IX. PERFORMANCE OR BREACH.(Cont'd)**

- (5). Jurisdiction of reviewing court.
- (6). Effect of defective or missing certification.
- (7). Scope of review.
- (8). Evidence.
- (9). Determination and disposition.
- 365. Withholding payments.
- 366. Defective plans or change of plans.
- 367. Replacement of materials under erroneous rulings.
- 368. Alterations and additional or extra work.
- 369. Partial performance.
- 370. Substantial performance.
- 371. Delay of government and liability for damages.
- 372. Delay of contractor.
- 373. Miscellaneous acts or conduct constituting breach.
- 374. Exhaustion of funds.
- 375. Cancellation of contract.
- 376. Wage increases and failure to provide labor.

X. RIGHTS AND REMEDIES OF CONTRACTORS.

- 400. In general.
- 401. Constitutional and statutory provisions.
- 402. Recovery of deductions.
- 403. Breach of contract by government entity, rights on.
- 404. Relief of contractors in general; misrepresentation and mistake.
- 405. Cancellation or termination of contract in general, rights of contractors.
- 406. Unauthorized or illegal contracts.
- 407. Rights as to improvements funded with assessments.
- 408. Settlement, release, and waiver in general.
- 409. Remedies of contractors.
- 410. — In general.
- 411. — Time for proceedings.
- 412. — Conditions precedent.
- 413. — Defenses.
- 414. — Pleading.
- 415. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.

X. RIGHTS AND REMEDIES OF CONTRACTORS.(Cont'd)

- (3). Weight and sufficiency.
- (4). — In general.
- (5). — Breach of contract.
- (6). — Cancellation or termination.
- (7). — Equitable adjustments.
- (8). — Damages.
- 416. — Damages and amount of recovery.
 - (1). In general.
 - (2). Cancellation or termination.
 - (3). Breach of contract in general.
 - (4). Delay.
 - (5). Loss of profits.
- 417. — Questions of law and fact.
- 418. — Instructions.
- 419. — Verdicts and findings.

XI. RIGHTS AND REMEDIES OF THIRD PARTIES.

- 430. In general.
- 431. Constitutional and statutory provisions.
- 432. Subcontractors, laborers, and materialmen; liens.
- 433. — In general.
- 434. — Lien or rights as to money due principal contractor.
- 435. — Perfection of lien.
- 436. — Payments to contractors; trust funds.
- 437. — Effect of contractor's assignment of contract; priorities.
- 438. — Assignment of lien or claim.
- 439. — Miscellaneous persons and claims protected.
- 440. — Notice or claim in general.
- 441. — Time for notice or claim.
- 442. — Discharge or extinguishment.
- 443. — Proceedings for enforcement.
- 444. Rights and remedies of assignees.
- 445. Rights and remedies of other third parties.

XII. RIGHTS AND REMEDIES OF GOVERNMENT ENTITY.

- 450. In general.
- 451. Constitutional and statutory provisions.
- 452. Breach by contractor, rights and remedies on.

316P. PUBLIC EMPLOYMENT**XII. RIGHTS AND REMEDIES OF
GOVERNMENT ENTITY.(Cont'd)**

453. Liability for cost of completion by another.
 454. Proceedings.
 455. — In general.
 456. — Evidence.
 457. — Damages and amount of recovery.
 458. Kickbacks.

XIII. CRIMES AND PROSECUTIONS.

460. In general.

316P. PUBLIC EMPLOYMENT**SUBJECTS INCLUDED**

- Persons employed by the government, particularly those persons who are within the scope of civil service or merit system laws and requirements
 Operation of such laws and requirements, and of the agencies, boards, and commissions that administer them
 Persons holding or occupying public office or otherwise exercising public functions and trusts in the service of the government
 Nature and kinds of such employment or office
 Creation and abolition of positions and offices
 Hiring of public employees, selection of public officials, and the eligibility and qualification of such employees and officials
 Duration of employment, term and tenure of public officials, and vacancies in office
 Rights of public employees and officials, particularly in regard to employment practices
 Proceedings concerning such rights, particularly those conducted by civil service or merit system agencies, boards, and commissions
 Authority, powers, duties, and liabilities of public employees and officials

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

- Attorneys, see ATTORNEYS AND LEGAL SERVICES, ATTORNEY GENERAL, and DISTRICT AND PROSECUTING ATTORNEYS
 Bribery, see BRIBERY
 Discrimination in employment, see CIVIL RIGHTS
 Elections, see ELECTION LAW
 Estoppel against public employees and officials, see ESTOPPEL
 Extortion, see EXTORTION
 Judicial employees and officials, and other employees and officials attached to courts, see COURTS, JUDGES, CLERKS OF COURTS, and other specific topics
 Labor relations, see LABOR AND EMPLOYMENT XII
 Liabilities for violations of civil or constitutional rights, see CIVIL RIGHTS and UNITED STATES V(D)2
 Lobbying, restrictions on employment in, see LOBBYING ¶5
 Military members and officers, see ARMED SERVICES, MILITIA, and WAR AND NATIONAL EMERGENCY
 Political activity by public employees, see ELECTION LAW ¶145
 Prisoners and inmates, labor and employment of, see PRISONS II(C), ¶360
 Private employment, see LABOR AND EMPLOYMENT
 Proceedings against public employees and officials for—
 Declaratory relief, see DECLARATORY JUDGMENT
 Injunctive relief, see INJUNCTION
 Mandamus, see MANDAMUS
 Prohibition, see PROHIBITION
 Quo warranto, see QUO WARRANTO
 Security clearances, see WAR AND NATIONAL EMERGENCY ¶1134
 Tribal government employees and officials, see INDIANS
 Unions and collective bargaining, see LABOR AND EMPLOYMENT XII
 Wages and hours regulation, see LABOR AND EMPLOYMENT XIII

316P. PUBLIC EMPLOYMENT

For employees and officials of particular governments, see also COUNTIES, DISTRICT OF COLUMBIA, MUNICIPAL CORPORATIONS, STATES, TERRITORIES, TOWNS, and UNITED STATES

For employees and officials devoted to particular fields of government activity and regulation, see also the topics and Key Numbers concerning those fields, including the following—

Agriculture, see also AGRICULTURE ⇨2, 3.3(3)

Aviation, see also AVIATION II

Banking, see also FINANCE, BANKING, AND CREDIT ⇨224

Bridges, see also BRIDGES ⇨13.1, 38

Carriers, see also CARRIERS ⇨10

Census, see also CENSUS ⇨3

Children, see also INFANTS ⇨1401, 1425, 1790, 3124

Civilian employees of the military, see also ARMED SERVICES ⇨27 and MILITIA ⇨12

Coroners and medical examiners, see also CORONERS

Diplomatic and consular affairs, see also INTERNATIONAL LAW III(B)

Education, see also EDUCATION

Elections, see also ELECTION LAW

Gambling, see also GAMING AND LOTTERIES ⇨302

Health, see also HEALTH

Hunting and fishing, see also FISH ⇨11 and GAME ⇨6

Immigration, see also ALIENS, IMMIGRATION, AND CITIZENSHIP ⇨144

Inspection, see also INSPECTION ⇨4

Insurance, see also INSURANCE

Licensing, see also LICENSES ⇨21

Maritime pilots, see also PILOTS ⇨4

Marriage licensing, see also MARRIAGE ⇨25

Motor vehicles, see also AUTOMOBILES ⇨38, 63, 80

Native peoples, see also INDIANS

Notaries public, see also NOTARIES

Parole, see also PARDON AND PAROLE ⇨55

Postal matters, see also POSTAL SERVICE ⇨5, 7–11

Prisons, see also PRISONS V

Public assistance, see also PUBLIC ASSISTANCE ⇨19, 95, 214

Public lands, see also PUBLIC LANDS

Public utilities, see also PUBLIC UTILITIES III(A)

Publication of judicial decisions, see also REPORTS ⇨3

Registers of deeds, see also REGISTERS OF DEEDS

Roads and highways, see also HIGHWAYS

Seamen, see also SEAMEN ⇨5

Securities, see also SECURITIES REGULATION ⇨81, 270

Sheriffs and constables, see also SHERIFFS AND CONSTABLES

Tax collection, see also CUSTOMS DUTIES, EDUCATION ⇨306, INTERNAL REVENUE, and TAXATION

Trade, see also ANTITRUST AND TRADE REGULATION ⇨301, 326, 336

Unemployment compensation, see also UNEMPLOYMENT COMPENSATION VII

United States Marshals, see also UNITED STATES MARSHALS

Veterans' affairs, see also ARMED SERVICES ⇨102

Water, see also WATER LAW

Woods and forests, see also WOODS AND FORESTS ⇨7

Workers' compensation, see also WORKERS' COMPENSATION XII

Zoning and planning, see also ZONING AND PLANNING ⇨1325

I. IN GENERAL, ⇨1–20.

II. CIVIL SERVICE ACTS, REQUIREMENTS, AND SYSTEMS IN GENERAL, ⇨21–40.

III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS, ⇨41–60.

IV. CREATION OF RELATIONSHIP; ELECTION, APPOINTMENT, AND HIRING, ⇨61–140.

(A) IN GENERAL, ⇨61–80.

316P. PUBLIC EMPLOYMENT

- IV. CREATION OF RELATIONSHIP; ELECTION, APPOINTMENT, AND HIRING—Cont'd
 - (B) GROUNDS FOR AND PROPRIETY OF SELECTION; ELIGIBILITY AND QUALIFICATION, ¶81–140.
- V. DURATION OF RELATIONSHIP, ¶141–220.
 - (A) IN GENERAL; TERM AND TENURE, ¶141–170.
 - (B) VACANCY, ¶171–190.
 - (C) TENURE OF TEACHERS AND EDUCATION PROFESSIONALS; CONTINUING CONTRACT STATUS, ¶191–220.
- VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL, ¶221–236.
- VII. EMPLOYMENT PRACTICES, ¶237–430.
 - (A) IN GENERAL, ¶237–250.
 - (B) DISCHARGE, SUSPENSION, AND OTHER ADVERSE ACTION, ¶251–310.
 - (C) LAYOFFS, FURLOUGHS, AND REDUCTIONS IN FORCE, ¶311–320.
 - (D) PROMOTION, DEMOTION, ASSIGNMENT, AND TRANSFER, ¶321–340.
 - (E) CONSTRUCTIVE ADVERSE ACTION, ¶341–350.
 - (F) COMPENSATION IN GENERAL, ¶351–370.
 - (G) COMPENSATION DURING ABSENCE; TIME OFF AND LEAVE, ¶371–380.
 - (H) PENSIONS AND BENEFITS, ¶381–420.
 - (I) REEMPLOYMENT, REINSTATEMENT, AND BACK PAY, ¶421–430.
- VIII. PROCEEDINGS, ¶431–840.
 - (A) IN GENERAL, ¶431–450.
 - (B) PROCEDURAL REQUIREMENTS AND PROTECTIONS IN GENERAL, ¶451–480.
 - (C) REVIEW BY ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS; CIVIL SERVICE AND MERIT SYSTEM PROCEEDINGS, ¶481–750.
 - 1. IN GENERAL, ¶481–550.
 - 2. FURTHER ADMINISTRATIVE REVIEW, ¶551–580.
 - 3. EVIDENCE, ¶581–630.
 - 4. RELIEF, ¶631–650.
 - 5. COSTS AND FEES, ¶651–680.

- VIII. PROCEEDINGS—Cont'd
 - (C) REVIEW BY ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS; CIVIL SERVICE AND MERIT SYSTEM PROCEEDINGS—Cont'd
 - 6. COMPLIANCE AND ENFORCEMENT, ¶681–710.
 - 7. SETTLEMENT, ¶711–740.
 - 8. CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS; RES JUDICATA AND COLLATERAL ESTOPPEL, ¶741–750.
 - (D) JUDICIAL REVIEW OR INTERVENTION, ¶751–790.
 - (E) ACTIONS, ¶791–820.
 - (F) JUDICIAL PROCEEDINGS FOR REMOVAL OR OUSTER, ¶821–840.
- IX. AUTHORITY AND POWERS, ¶841–860.
- X. DUTIES, ¶861–890.
- XI. LIABILITIES, ¶891–1020.
 - (A) IN GENERAL, ¶891–910.
 - (B) PARTICULAR CASES AND CONTEXTS, ¶911–950.
 - 1. IN GENERAL, ¶911–930.
 - 2. PRIVILEGE OR IMMUNITY; GOOD FAITH, ¶931–950.
 - (C) EXISTENCE AND EXCLUSIVITY OF OTHER REMEDIES, ¶951–960.
 - (D) PERSONS LIABLE, ¶961–980.
 - (E) ACTIONS, ¶981–1020.
- XII. LIABILITIES ON OFFICIAL BONDS, ¶1021–1050.
- XIII. CRIMINAL RESPONSIBILITY, ¶1051–1080.
- XIV. TEMPORARY, SEASONAL, OR PROVISIONAL EMPLOYMENT, ¶1081–1110.
- XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES, ¶1111–1134.

I. IN GENERAL.

- 1. In general.
- 2. Constitutional and statutory provisions in general.
- 3. Nature and existence of public employment; definitions.
- 4. — In general.
- 5. — Public office, officers, and officials.
- 6. — Deputies and assistants.
- 7. — Who is employer; multiple entities or agencies.

316P. PUBLIC EMPLOYMENT**I. IN GENERAL.**(Cont'd)

- 8. Creation and abolition of position or office.
- 9. — In general.
- 10. — Reorganization.
- 11. — Contracts for services; privatization.

II. CIVIL SERVICE ACTS, REQUIREMENTS, AND SYSTEMS IN GENERAL.

- 21. In general.
- 22. Purpose and construction in general.
- 23. Exclusivity in general.
- 24. Entities affected.
- 25. Positions, offices, and employees affected; classification.
- 26. — In general.
- 27. — Particular cases and contexts in general.
- 28. — Reclassification.
- 29. — Unclassified service; declassification.
- 30. — Priority and seniority in general.
- 31. — Movement between positions; fall-back rights.
- 32. — Full-time or part-time employment.
- 33. Creation and abolition of position or office.
- 34. — In general.
- 35. — Reorganization.
- 36. — Contracts for services; privatization.

III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS.

- 41. In general.
- 42. Powers and proceedings in general.
- 43. Relation to other agencies, boards, and commissions.
- 44. Number requisite to action; quorum.
- 45. Rules of decision; stare decisis.
- 46. — In general.
- 47. — Judicial decisions.
- 48. — Administrative decisions.
- 49. — Arbitration decisions.
- 50. Investigations.
- 51. Rules, regulations, and other policymaking.
- 52. — In general.
- 53. — Administrative review.
- 54. — Judicial review or intervention.
- 55. Administrative construction of statutes.

III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS.(Cont'd)

- 56. Employees and officials of administrative agencies, boards, and commissions.
- 57. — In general.
- 58. — Members and officers.

IV. CREATION OF RELATIONSHIP; ELECTION, APPOINTMENT, AND HIRING.**(A) IN GENERAL.**

- 61. In general.
- 62. Authority to select.
- 63. — In general.
- 64. — Selection of officers.
- 65. — Selection by officers.
- 66. Manner and mode of selection.
- 67. — In general.
- 68. — Officers in general.
- 69. — Election or appointment.
- 70. — Multiple decisionmakers; confirmation or other approval.
- 71. — Revocation, rescission, or reconsideration.
- 72. Time for making selection.

(B) GROUNDS FOR AND PROPRIETY OF SELECTION; ELIGIBILITY AND QUALIFICATION.

- 81. In general.
- 82. Merit in general.
- 83. Particular cases and contexts in general.
- 84. Public office in general.
- 85. — In general.
- 86. — Elective office.
- 87. Education, experience, and skills.
- 88. Licensure or certification.
- 89. Examination.
- 90. — In general.
- 91. — Competitive or noncompetitive.
- 92. — Rating and grading.
- 93. Eligibility lists.
- 94. — In general.
- 95. — Priority and ranking.
- 96. Prohibited practices and discrimination in general.
- 97. Preferences.
- 98. — In general.
- 99. — Veterans' preferences.
- 100. — Indian preferences.

316P. PUBLIC EMPLOYMENT**IV. CREATION OF RELATIONSHIP;
ELECTION, APPOINTMENT,
AND HIRING.(Cont'd)**

101. Race.
102. Age.
103. Sex.
104. Sexual orientation or identity.
105. Marital, parental, or familial status.
106. Disability.
107. Religion.
108. Political beliefs or affiliation.
109. Alienage.
110. Citizenship.
111. Residence or domicile.
112. Language and literacy.
113. Property and payment of taxes.
114. Bias or interest.
115. — In general.
116. — Familial relationship; nepotism.
117. — Financial or pecuniary interest.
 - (1). In general.
 - (2). Disclosure.
118. — Membership in body making appointment.
119. Holding other office or employment; incompatibility.
120. — In general.
121. — Local-local conflicts.
122. — Local-state conflicts.
123. — State-state conflicts.
124. — State-federal and local-federal conflicts.
125. — Federal-federal conflicts.
126. — Judicial office or employment, conflicts involving.
127. — Legislative office or employment, conflicts involving.
128. — Resignation or other removal of conflict.
129. Commission or conviction of crime.
130. Formal requirements; qualification.
131. — In general.
132. — Oath.
133. — Bond.
134. — Commission.
135. Evidence in general.

V. DURATION OF RELATIONSHIP.**(A) IN GENERAL; TERM AND TENURE.**

141. In general.
142. Indefinite term; employment at-will.
143. Definite or fixed term.
144. — In general.
145. — Commencement, computation, and expiration of term.
146. — Continuation in position or office after expiration of term; holding over.
147. Change of term.
148. Term limits.
149. Voluntary or agreed termination.
150. — In general.
151. — Resignation.
152. — Absence or abandonment.
153. — Constructive resignation.
154. Retirement.
155. — In general.
156. — Mandatory retirement.
157. Death, disability, or incapacitation.
158. Disqualification and forfeiture.
159. Impeachment or address.
160. Recall.
161. — In general.
162. — Persons subject.
163. — Grounds.
164. — Petition or other application.
165. — Conduct of election.
166. — Proceedings to challenge or review.

(B) VACANCY.

171. In general.
172. Occurrence and existence; what creates or constitutes vacancy.
173. — In general.
174. — Resignation, abandonment, or removal.
175. — Death, disability, or incapacitation.
176. — Temporary absence or incapacitation.
177. — Ineligibility or disqualification.
 - (1). In general.
 - (2). Defects as to oath, bond, or other formal requirements.
178. — Acceptance of other position or office.

316P. PUBLIC EMPLOYMENT**V. DURATION OF RELATIONSHIP.(Cont'd)**

- 179. — Newly created position or office, vacancy as to.
- 180. Authority to fill vacancy.
- 181. Manner and mode of filling vacancy.
- 182. — In general.
- 183. — Election or appointment.
- 184. Term of person filling vacancy.

(C) TENURE OF TEACHERS AND EDUCATION PROFESSIONALS; CONTINUING CONTRACT STATUS.

- 191. In general.
- 192. Constitutional and statutory provisions.
- 193. — In general.
- 194. — Purpose of statutes.
- 195. — Construction and operation in general.
- 196. Persons entitled.
- 197. Substitute teachers.
- 198. Length of service and probation.
- 199. — In general.
- 200. — Calculation of probationary period.
- 201. — Tenure by estoppel.
- 202. Schools affected.
- 203. Effect of attaining tenure.
- 204. Retention or waiver of rights.
- 205. Abrogation or modification of rights.
- 206. Proceedings and review.

VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL.

- 221. In general.
- 222. Property rights and interests.
- 223. Contracts; rights and interests therein.
- 224. — In general.
- 225. — Making, requisites, and validity.
- 226. — Construction and operation.
- 227. — Performance or breach.
- 228. Good faith and fair dealing.
- 229. Right or title to position or office.
- 230. — In general.
- 231. — De jure officers or employees.
- 232. — De facto officers or employees.
 - (1). In general.
 - (2). Compensation.
 - (3). Authority, powers, duties, and liabilities.
 - (4). Liability for compensation and fees received.

VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL.(Cont'd)

- 233. — Usurpers and intruders.
- 234. — Collateral inquiry or attack.
- 235. — Evidence in general.
- 236. Relinquishment or limitation of rights.

VII. EMPLOYMENT PRACTICES.**(A) IN GENERAL.**

- 237. In general.
- 238. Direction, control, and regulation by employer in general.
- 239. Duties of employer in general.
- 240. Education and training.
- 241. Privacy; searches.
- 242. — In general.
- 243. — Alcohol and drug testing.
- 244. Records; personnel files.
- 245. — In general.
- 246. — Right to examine.

(B) DISCHARGE, SUSPENSION, AND OTHER ADVERSE ACTION.

- 251. In general.
- 252. Removal, separation, termination, and discharge in general.
- 253. Suspension or other discipline in general.
- 254. Authority to impose adverse action; manner and mode of imposition.
- 255. Grounds for and propriety of adverse action.
- 256. — In general.
- 257. — Cause in general.
- 258. — Prohibited or improper grounds in general.
 - (1). In general.
 - (2). Discrimination in general.
 - (3). Political beliefs or affiliation.
- 259. — Conduct or misconduct in general.
 - (1). In general.
 - (2). During prior term or employment.
- 260. — Off-duty conduct in general.
- 261. — Suitability in general.
- 262. — Competence or performance in general.
- 263. — Performance standards, systems, and plans.
- 264. — Eligibility and qualifications.
- 265. — Disobedience or insubordination.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- 266. — Attendance.
- 267. — Strike or work stoppage.
- 268. — Bias or conflict of interest.
- 269. — Fraud, deception, or lack of candor.
- 270. — Destruction, misuse, or unauthorized possession of government property.
- 271. — Theft or embezzlement.
- 272. — Alcohol or drug use.
- 273. — Tobacco use.
- 274. — Economic or financial problems of employee.
- 275. — Discriminatory or retaliatory conduct in general.
- 276. — Violent, dangerous, abusive, or harassing conduct.
- 277. — Sexual conduct.
- 278. — National security concerns.
- 279. — Criminal charges, convictions, or history.
- 280. Exercise of rights; retaliation.
- 281. — In general.
- 282. — Protected activities.
- 283. — Motive and intent; pretext.
- 284. — Causal connection; temporal proximity.
- 285. Reporting or opposing wrongdoing; whistleblowing.
- 286. — In general.
- 287. — Protected activities.
- 288. — Motive and intent; pretext.
- 289. — Causal connection; temporal proximity.
- 290. Refusal to engage in wrongdoing.
- 291. — In general.
- 292. — Protected activities.
- 293. — Motive and intent; pretext.
- 294. — Causal connection; temporal proximity.
- 295. Nature, extent, and severity of sanction or penalty imposed.
- 296. — In general.
- 297. — Particular cases in general.
- 298. — Aggravation and mitigation.
- 299. — Disparate treatment.
- 300. — Past record; prior discipline.
- 301. Definiteness of sanction or penalty imposed.

VII. EMPLOYMENT PRACTICES.(Cont'd)

- 302. — In general.
- 303. — Indefinite suspension.
- 304. Progressive discipline.
- 305. Suspension pending investigation or resolution of charges.
- 306. Priority and seniority.
- 307. Veterans' preferences.

(C) LAYOFFS, FURLOUGHS, AND REDUCTIONS IN FORCE.

- 311. In general.
- 312. Grounds for and propriety of imposition.
- 313. — In general.
- 314. — Economic, budgetary, or efficiency concerns.
- 315. — Reclassification of position.
- 316. — Abolition of position; reorganization or privatization.
- 317. Priority and seniority.
- 318. Veterans' preferences.

(D) PROMOTION, DEMOTION, ASSIGNMENT, AND TRANSFER.

- 321. In general.
- 322. Authority to implement or impose.
- 323. Assignment of work or duties in general.
- 324. Additional duties; out-of-title work.
- 325. Reassignment; transfer.
- 326. — In general.
- 327. — Layoff, furlough, or reduction in force.
- 328. Reduction in grade or rank; demotion.
- 329. Promotion.
- 330. — In general.
- 331. — Cancellation of promotion.
- 332. Priority and seniority.
- 333. Veterans' preferences.

(E) CONSTRUCTIVE ADVERSE ACTION.

- 341. In general.
- 342. Constructive removal, separation, termination, or discharge.
- 343. Constructive suspension or other discipline.
- 344. Constructive demotion.

(F) COMPENSATION IN GENERAL.

- 351. In general.
- 352. Authority to regulate.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- 353. Form, rate, and amount in general.
- 354. Salaries.
- 355. Commissions and fees.
- 356. — In general.
- 357. — Particular duties, services, or activities.
- 358. Additional compensation; extra services.
- 359. Overtime compensation.
- 360. Increase or reduction.
- 361. — In general.
- 362. — Officers.
- 363. Severance pay and benefits.
- 364. Reimbursement of expenses; indemnification.
- 365. — In general.
- 366. — Travel expenses, mileage, and per diem.
- 367. — Litigation expenses.
- 368. Deductions and offsets.
- 369. Payment and collection.
- 370. Recovery back of payments; overpayment.

**(G) COMPENSATION DURING ABSENCE;
TIME OFF AND LEAVE.**

- 371. In general.
- 372. Vacation and holidays.
- 373. Medical leave and sick time.
- 374. Pregnancy, maternity, and parental leave.
- 375. Sabbatical.

(H) PENSIONS AND BENEFITS.

- 381. In general.
- 382. Authority to regulate.
- 383. Eligibility and right to benefits.
- 384. — In general.
- 385. — Pensions and retirement benefits in general.
- 386. — Early retirement.
- 387. — Deferred compensation.
- 388. — Health and medical benefits.
 - (1). In general.
 - (2). Pensioners and retirees.
- 389. — Disability benefits.
 - (1). In general.
 - (2). Disability pensions and disability retirement in general.

VII. EMPLOYMENT PRACTICES.(Cont'd)

- (3). Particular conditions or impairments.
- (4). — In general.
- (5). — Mental and psychological conditions or impairments.
- (6). — Alcohol and drugs; substance abuse.
- (7). — Situational or environmental considerations.
- (8). — Multiple conditions or impairments; cumulative effect.
- (9). Accommodation.
- (10). — In general.
- (11). — Reassignment.
- 390. — Death and survivors' benefits.
- 391. Funds and contributions.
- 392. — In general.
- 393. — Withdrawals, refunds, and deposits.
- 394. Amount and computation.
- 395. — In general.
- 396. — Pensions and retirement benefits in general.
- 397. — Disability benefits.
- 398. — Death and survivors' benefits.
- 399. Service credit.
- 400. — In general.
- 401. — Military service.
- 402. Enhanced or special benefits for particular employment categories.
- 403. — In general.
- 404. — Law enforcement personnel.
- 405. — Firefighters.
- 406. Payment and apportionment.
- 407. Revocation, suspension, or termination of benefits.
- 408. — In general.
- 409. — Disability benefits.
- 410. — Reinstatement of benefits.
- 411. Recovery back of payments; overpayment.
- 412. — In general.
- 413. — Factors precluding recovery; waiver of overpayment.

**(I) REEMPLOYMENT, REINSTATEMENT,
AND BACK PAY.**

- 421. In general.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- 422. Following layoff, furlough, or reduction in force.
- 423. Following demotion, reassignment, or transfer.
- 424. Following injury or disability.
- 425. — In general.
- 426. — Partial recovery; limited or modified work.
- 427. Effect on pensions and benefits.

VIII. PROCEEDINGS.**(A) IN GENERAL.**

- 431. In general.
- 432. Exclusive, concurrent, and conflicting remedies.
- 433. — In general.
- 434. — Retaliation, whistleblowing, and discrimination.
- 435. Exhaustion of remedies.
- 436. — In general.
- 437. — Retaliation, whistleblowing, and discrimination.
- 438. Election of remedies.
- 439. — In general.
- 440. — Retaliation, whistleblowing, and discrimination.
- 441. Primary jurisdiction.

(B) PROCEDURAL REQUIREMENTS AND PROTECTIONS IN GENERAL.

- 451. In general.
- 452. Right to notice, opportunity to respond, and hearing in general.
- 453. — In general.
- 454. — Federal personnel in general.
- 455. — State, local, and other non-federal personnel in general.
- 456. — Law enforcement personnel.
- 457. Timeliness in general.
- 458. Requisites and sufficiency of notice, charge, or claim.
- 459. — In general.
- 460. — Particular matters.
 - (1). In general.
 - (2). Removal, separation, termination, and discharge.
 - (3). Suspension or other discipline.
 - (4). Layoffs, furloughs, and reductions in force.

VIII. PROCEEDINGS.(Cont'd)

- (5). Promotion, demotion, assignment, and transfer.
- (6). Compensation.
- (7). Pensions and benefits.
- 461. — Variance from proof.
- 462. — Merging or splitting charges.
- 463. Application or other request for benefits.
- 464. — In general.
- 465. — Time for making.
- 466. — Government-initiated applications.
- 467. Grievances in general.
- 468. Defenses in general.
- 469. Requisites and sufficiency of hearing.
- 470. Bias or other disqualification of decisionmaker.
- 471. Counsel.
- 472. Ex parte communications.
- 473. Scope of inquiry.
- 474. Decision or determination.
- 475. Notice of right to appeal or seek review.

(C) REVIEW BY ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS; CIVIL SERVICE AND MERIT SYSTEM PROCEEDINGS.**1. IN GENERAL.**

- 481. In general.
- 482. Nature and form of proceedings.
- 483. Jurisdiction in general.
- 484. Particular jurisdictional issues and reviewable matters.
- 485. — In general.
- 486. — Entities, positions, offices, and employees affected; classification.
- 487. — Creation of employment relationship; appointment and hiring.
- 488. — Adverse actions and prohibited practices in general.
- 489. — Removal, separation, termination, and discharge in general.
- 490. — Suspension or other discipline in general.
- 491. — Exercise of rights; retaliation.
- 492. — Reporting or opposing wrongdoing; whistleblowing.
- 493. — Retirement or resignation.
- 494. — Layoffs, furloughs, and reductions in force.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 495. — Promotion, demotion, assignment, and transfer.
- 496. — Constructive adverse action.
- 497. — Compensation.
- 498. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). Death and survivors' benefits.
 - (4). Recovery back of payments; overpayment.
- 499. — Reemployment and reinstatement.
- 500. — Discrimination; "mixed cases".
- 501. — Matters covered by collective bargaining agreements in general.
- 502. — Grievance procedures and decisions.
- 503. — National security determinations.
- 504. Finality.
- 505. Prematurity; ripeness.
- 506. Mootness.
- 507. Persons entitled to seek review; parties; standing.
- 508. — In general.
- 509. — Bringing in new parties; joinder.
- 510. — Intervention.
- 511. — Substitution.
- 512. — Class actions.
- 513. Time for review.
- 514. — In general.
- 515. — Accrual, computation, and tolling.
- 516. — Excuses for delay; good cause.
 - (1). In general.
 - (2). Knowledge or notice.
 - (3). Incapacity.
 - (4). Reliance on representations; estoppel.
 - (5). Reliance on attorney or other representative.
- 517. Complaint, petition, or other application for review.
- 518. Presentation and preservation of issues; record.
- 519. Proceedings on review; hearing.
- 520. — In general.
- 521. — Assignment and role of administrative judge or other reviewing officer.
 - (1). In general.

VIII. PROCEEDINGS.(Cont'd)

- (2). Providing notice or other assistance to litigants.
- (3). Bias or other disqualification.
- 522. — Necessity of hearing; requests.
- 523. — Time for hearing.
- 524. — Notice of hearing.
- 525. — Venue.
- 526. — Continuance or postponement.
- 527. — Suspension or stay.
- 528. — Consolidation or bifurcation.
- 529. — Discovery.
- 530. — Prehearing or status conference.
- 531. — Counsel.
- 532. — Ex parte communications.
- 533. — Sanctions in general.
- 534. — Dismissal in general.
- 535. — Voluntary dismissal; withdrawal.
- 536. — Failure to prosecute or defend.
- 537. — Record.
- 538. Scope of review.
- 539. — In general.
- 540. — Theory or grounds relied on below.
- 541. — Standard of review.
- 542. Harmless, prejudicial, and reversible error.
- 543. Findings, conclusions, decision, and order.
- 544. — In general.
- 545. — Timeliness.
- 546. Reopening and reconsideration.
- 547. Proceedings on government-initiated applications for benefits.
- 2. FURTHER ADMINISTRATIVE REVIEW.**
- 551. In general.
- 552. Decisions subject to further administrative review.
- 553. — In general.
- 554. — Finality; interlocutory review.
- 555. — Prematurity; ripeness.
- 556. — Mootness.
- 557. Persons entitled to seek further administrative review; parties; standing.
- 558. Time for further administrative review.
- 559. — In general.
- 560. — Accrual, computation, and tolling.
- 561. — Excuses for delay; good cause.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- (1). In general.
- (2). Knowledge or notice.
- (3). Incapacity.
- (4). Reliance on representations; estoppel.
- (5). Reliance on attorney or other representative.
- 562. Petition or other application for further administrative review.
- 563. Presentation and preservation of issues for further administrative review; record.
- 564. — In general.
- 565. — New or additional evidence.
 - (1). In general.
 - (2). Particular cases.
- 566. Proceedings on further administrative review; hearing.
- 567. Scope of further administrative review.
- 568. — In general.
- 569. — Theory or grounds relied on below.
- 570. — Standard of review.
 - (1). In general.
 - (2). Factual findings in general.
 - (3). Credibility and demeanor of witnesses.
- 571. Harmless, prejudicial, and reversible error on further administrative review.
- 572. — In general.
- 573. — Particular cases.
- 574. Determination and disposition on further administrative review.
- 575. — In general.
- 576. — Reversal.
- 577. — Remand.
 - (1). In general.
 - (2). Proceedings on remand.
- 578. Reopening and reconsideration of further administrative review.

3. EVIDENCE.

- 581. In general.
- 582. Official notice.
- 583. Admissibility in general.
- 584. Hearsay in general.
- 585. Admissions, declarations, and confessions.

VIII. PROCEEDINGS.(Cont'd)

- 586. Documentary and demonstrative evidence.
- 587. Stipulations.
- 588. Witnesses.
- 589. — In general.
- 590. — Subpoenas.
- 591. — Competency.
- 592. — Examination, credibility, and impeachment.
- 593. Expert and opinion evidence.
- 594. Privilege.
- 595. Presumptions and burden of proof.
- 596. — In general.
- 597. — Entities, positions, offices, and employees affected; classification.
- 598. — Creation of employment relationship; appointment and hiring.
- 599. — Adverse actions and prohibited practices in general.
- 600. — Removal, separation, termination, and discharge in general.
- 601. — Suspension or other discipline in general.
- 602. — Exercise of rights; retaliation.
- 603. — Reporting or opposing wrongdoing; whistleblowing.
- 604. — Retirement or resignation.
- 605. — Layoffs, furloughs, and reductions in force.
- 606. — Promotion, demotion, assignment, and transfer.
- 607. — Constructive adverse action.
- 608. — Compensation.
- 609. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). Death and survivors' benefits.
 - (4). Recovery back of payments; overpayment.
- 610. — Reemployment and reinstatement.
- 611. — Discrimination.
- 612. Weight and sufficiency.
- 613. — In general.
- 614. — Entities, positions, offices, and employees affected; classification.
- 615. — Creation and duration of employment relationship.
- 616. — Adverse actions and prohibited practices in general.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 617. — Removal, separation, termination, and discharge in general.
- 618. — Suspension or other discipline in general.
- 619. — Exercise of rights; retaliation.
- 620. — Reporting or opposing wrongdoing; whistleblowing.
- 621. — Retirement or resignation.
- 622. — Layoffs, furloughs, and reductions in force.
- 623. — Promotion, demotion, assignment, and transfer.
- 624. — Constructive adverse action.
- 625. — Compensation.
- 626. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). — In general.
 - (4). — Medical evidence.
 - (5). — Subjective evidence.
 - (6). — Vocational evidence.
 - (7). Death and survivors' benefits.
 - (8). Recovery back of payments; overpayment.
- 627. — Reemployment and reinstatement.
- 628. — Discrimination.

4. RELIEF.

- 631. In general.
- 632. Restoration of status quo ante.
- 633. Monetary relief.
- 634. — In general.
- 635. — Lost income or benefits; back pay.
- 636. — Damages.
- 637. Preliminary, temporary, or interim relief.
- 638. Stay of adverse action pending investigation.
- 639. — In general.
- 640. — Extension of stay.
- 641. Proceedings concerning relief.
- 642. — In general.
- 643. — Further administrative review.
- 644. Evidence.

5. COSTS AND FEES.

- 651. In general.
- 652. Items, amount, and reasonableness in general.

VIII. PROCEEDINGS.(Cont'd)

- 653. Attorney fees.
- 654. — In general.
- 655. — Prevailing party.
- 656. — Existence of attorney-client relationship.
- 657. — Culpability of employer; interest of justice.
 - (1). In general.
 - (2). Prohibited personnel practices.
 - (3). Charges clearly without merit or wholly unfounded; substantial innocence.
 - (4). Bad faith.
 - (5). Gross procedural error.
 - (6). Agency knew or should have known of want of merit.
- 658. — Items, amount, and reasonableness.
 - (1). In general; lodestar.
 - (2). Hourly rate.
 - (3). Time spent.
 - (4). Adjustments.
 - (5). Degree of success.
- 659. — Contingency arrangements.
- 660. Costs and fees incurred on judicial review.
- 661. Proceedings concerning costs and fees.
- 662. — In general.
- 663. — Jurisdiction and powers.
- 664. — Time for proceedings.
- 665. — Hearing and determination.
- 666. — Further administrative review.
- 667. Evidence.
- 668. — In general.
- 669. — Presumptions and burden of proof.
- 670. — Weight and sufficiency.

6. COMPLIANCE AND ENFORCEMENT.

- 681. In general.
- 682. Acts constituting compliance with order.
- 683. — In general.
- 684. — Order restoring status quo ante.
- 685. — Monetary relief order.
- 686. — Interim relief order.
- 687. Proceedings concerning compliance and enforcement.
- 688. — In general.
- 689. — Jurisdiction and powers.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 690. — Time for proceedings.
- 691. — Hearing and determination.
- 692. — Further administrative review.
- 693. Evidence.
- 694. — In general.
- 695. — Presumptions and burden of proof.
- 696. — Weight and sufficiency.
- 697. Effect of noncompliance; relief; sanctions.
- 698. — In general.
- 699. — Noncompliance with order of preliminary, temporary, or interim relief.
- 700. Stay of enforcement.

7. SETTLEMENT.

- 711. In general.
- 712. Requisites and validity.
- 713. Construction, operation, and effect.
- 714. — In general.
- 715. — Settlement as waiver of rights.
- 716. Modification or rescission.
- 717. Performance, breach, and enforcement.
- 718. Proceedings concerning settlement.
- 719. — In general.
- 720. — Jurisdiction and powers.
- 721. — Time for proceedings.
- 722. — Hearing and determination.
- 723. — Further administrative review.
- 724. Evidence.
- 725. — In general.
- 726. — Presumptions and burden of proof.
- 727. — Weight and sufficiency.
- 728. Effect of breach or noncompliance; relief; sanctions.
- 729. "Last chance" agreements.
- 730. "Clean record" agreements.

8. CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS; RES JUDICATA AND COLLATERAL ESTOPPEL.

- 741. In general.
- 742. Law of the case.

(D) JUDICIAL REVIEW OR INTERVENTION.

- 751. In general.
- 752. Nature and form of proceedings.
- 753. Jurisdiction in general.
- 754. Decisions reviewable.
- 755. — In general.

VIII. PROCEEDINGS.(Cont'd)

- 756. — Finality; interlocutory review.
- 757. — Prematurity; ripeness.
- 758. — Mootness.
- 759. Persons entitled to seek review; parties; standing.
- 760. Time for review.
- 761. Petition or other application for review.
- 762. Presentation and preservation of issues for review; record.
- 763. Proceedings on review; hearing.
- 764. Scope of review.
- 765. — In general.
- 766. — Theory or grounds relied on below.
- 767. — Standard of review in general.
 - (1). In general.
 - (2). Questions of law and fact in general; findings and conclusions in general.
- 768. — Particular questions or matters.
 - (1). In general.
 - (2). Statutory and regulatory questions in general.
 - (3). Entities, positions, offices, and employees affected; classification.
 - (4). Creation of employment relationship; appointment and hiring.
 - (5). Employment practices; adverse action.
 - (6). — In general.
 - (7). — Nature, extent, and severity of sanction or penalty imposed.
 - (8). — Discrimination; "mixed cases".
 - (9). Compensation, pensions, and benefits.
 - (10). Procedural matters in general.
 - (11). Jurisdiction.
 - (12). Time limits.
 - (13). Evidence and discovery.
 - (14). — In general.
 - (15). — Weight and sufficiency of evidence; credibility.
 - (16). — Substantial evidence.
 - (17). Relief.
 - (18). Costs and fees.
 - (19). Compliance and enforcement.
 - (20). Settlement.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 769. Presumptions and burden of showing error.
- 770. Harmless, prejudicial, and reversible error.
- 771. Determination and disposition on review.
- 772. — In general.
- 773. — Reversal.
- 774. — Remand.
 - (1). In general.
 - (2). Proceedings on remand.
- 775. Reopening and reconsideration.
- 776. Further judicial review.
- 777. — In general.
- 778. — Scope of further judicial review.
- 779. — Harmless, prejudicial, and reversible error.
- 780. — Determination and disposition on further review.
- 781. — Reopening and reconsideration.

(E) ACTIONS.

- 791. In general.
- 792. Nature, form, and right of action.
- 793. Jurisdiction and venue.
- 794. Time for proceedings; limitations.
- 795. Parties; standing.
- 796. Process and appearance.
- 797. Pleading.
- 798. — In general.
- 799. — Exercise of rights; retaliation.
- 800. — Reporting or opposing wrongdoing; whistleblowing.
- 801. Evidence in general; admissibility.
- 802. Presumptions and burden of proof.
- 803. — In general.
- 804. — Exercise of rights; retaliation.
- 805. — Reporting or opposing wrongdoing; whistleblowing.
- 806. Weight and sufficiency of evidence.
- 807. — In general.
- 808. — Exercise of rights; retaliation.
- 809. — Reporting or opposing wrongdoing; whistleblowing.
- 810. Trial, judgment, and relief.
- 811. Costs and fees.

(F) JUDICIAL PROCEEDINGS FOR REMOVAL OR OUSTER.

- 821. In general.
- 822. Nature, form, and right of action.
- 823. Jurisdiction and venue.
- 824. Time for proceedings; limitations.
- 825. Parties; standing.
- 826. Process and appearance.
- 827. Pleading.
- 828. Evidence.
- 829. — In general; admissibility.
- 830. — Presumptions and burden of proof.
- 831. — Weight and sufficiency.
- 832. Trial, judgment, and relief.
- 833. Review.
- 834. Costs and fees.

IX. AUTHORITY AND POWERS.

- 841. In general.
- 842. Ultra vires acts in general.
- 843. Delegation in general.
- 844. Deputies and assistants.
- 845. Ministerial officers.
- 846. Agents and employees.
- 847. Special authority or employment.
- 848. Disabilities.
- 849. Actions by employees, officers, and agents.

X. DUTIES.

- 861. In general.
- 862. Language requirements.
- 863. Custody and care of public funds and other property.
- 864. Accounting, audit, and settlement.
- 865. Ethics and conflicts of interest in general.
- 866. Disclosure obligations.
- 867. Confidentiality.
- 868. Outside activities.
- 869. — In general.
- 870. — Prepublication review.
- 871. Education, training, licensure, and certification.
- 872. Former personnel; post-employment duties.
- 873. Ethics boards and commissions.
- 874. — In general.
- 875. — Proceedings.

316P. PUBLIC EMPLOYMENT**X. DUTIES.(Cont'd)**

- 876. — Judicial review or intervention.
- 877. Obstruction of or interference with performance of official duties.

XI. LIABILITIES.**(A) IN GENERAL.**

- 891. In general.
- 892. Officers, officials, and official acts in general.
- 893. Negligence or misconduct in general.
- 894. Ministerial acts or functions.
- 895. Discretionary acts or functions.
- 896. Privilege or immunity; good faith.
- 897. — In general; official immunity.
- 898. — Sovereign immunity, and relation of official immunity thereto.
- 899. — Absolute immunity.
- 900. — Qualified immunity.
- 901. — Discretionary function immunity.
- 902. — Judicial immunity.
- 903. — Legislative immunity.
- 904. — Prosecutorial immunity.

(B) PARTICULAR CASES AND CONTEXTS.**1. IN GENERAL.**

- 911. In general.
- 912. Federal personnel in general.
- 913. State, local, and other non-federal personnel in general.
- 914. Particular torts.
- 915. Defamation, disclosure, and privacy claims.
- 916. Law enforcement personnel.
- 917. Claims by fellow employees.

2. PRIVILEGE OR IMMUNITY; GOOD FAITH.

- 931. In general.
- 932. Federal personnel in general.
- 933. State, local, and other non-federal personnel in general.
- 934. Particular torts.
- 935. Defamation, disclosure, and privacy claims.
- 936. Law enforcement personnel.
- 937. Claims by fellow employees.

(C) EXISTENCE AND EXCLUSIVITY OF OTHER REMEDIES.

- 951. In general.
- 952. Tort claims acts.
- 953. Other particular remedies.
- 954. Exhaustion of remedies.

(D) PERSONS LIABLE.

- 961. In general.
- 962. Individual or official capacity.
- 963. — In general.
- 964. — Federal personnel in general.
- 965. — State, local, and other non-federal personnel in general.
- 966. — Law enforcement personnel.
- 967. — Claims by fellow employees.
- 968. Personal involvement; vicarious liability and respondeat superior.
- 969. — In general.
- 970. — Federal personnel in general.
- 971. — State, local, and other non-federal personnel in general.
- 972. — Law enforcement personnel.
- 973. — Claims by fellow employees.

(E) ACTIONS.

- 981. In general.
- 982. Nature, form, and right of action.
- 983. Conditions precedent.
- 984. Jurisdiction and venue.
- 985. Time to sue; limitations.
- 986. Parties; standing.
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 - (2). Federal personnel in general.
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 - (4). Law enforcement personnel.
 - (5). Claims by fellow employees.
- 990. Process and appearance.
- 991. Pleading.
- 992. — In general.
- 993. — Privilege or immunity in general.
- 994. — Federal personnel in general.
- 995. — State, local, and other non-federal personnel in general.
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316P. PUBLIC EMPLOYMENT**XI. LIABILITIES.(Cont'd)**

- 997. — Claims by fellow employees.
- 998. Evidence in general; admissibility.
- 999. Presumptions and burden of proof.
- 1000. — In general.
- 1001. — Privilege or immunity in general.
- 1002. — Federal personnel in general.
- 1003. — State, local, and other non-federal personnel in general.
- 1004. — Law enforcement personnel.
- 1005. — Claims by fellow employees.
- 1006. Weight and sufficiency of evidence.
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- 1008. — Privilege or immunity in general.
- 1009. — Federal personnel in general.
- 1010. — State, local, and other non-federal personnel in general.
- 1011. — Law enforcement personnel.
- 1012. — Claims by fellow employees.
- 1013. Trial, judgment, and relief.
- 1014. Costs and fees.

XII. LIABILITIES ON OFFICIAL BONDS.

- 1021. In general; nature of liability.
- 1022. Rights and remedies of sureties; discharge.
- 1023. Acts constituting breach or fulfillment of bond; accrual of liability.
- 1024. Extent of liability.
- 1025. Conclusiveness of former adjudication.
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- 1028. Actions.
- 1029. — In general.
- 1030. — Nature, form, and right of action.
- 1031. — Conditions precedent.
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- 1033. — Jurisdiction and venue.
- 1034. — Time to sue and limitations.
- 1035. — Parties; standing.
- 1036. — Process and appearance.
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- 1038. — Evidence.
- 1039. — Trial, judgment, and relief.
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XIII. CRIMINAL RESPONSIBILITY.

- 1051. In general.
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XIII. CRIMINAL RESPONSIBILITY.(Cont'd)

- 1053. — In general.
- 1054. — Law enforcement activities.
- 1055. — Sexual conduct.
- 1056. — Conflicts of interest.
- 1057. — Improper income supplementation.
- 1058. — Disclosure or other misuse of confidential information.
- 1059. — Usurpation or intrusion.
- 1060. Defenses.
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- 1062. — Immunity.
- 1063. Indictment, information, presentment, or complaint.
- 1064. Evidence.
- 1065. — In general; admissibility.
- 1066. — Presumptions and burden of proof.
- 1067. — Weight and sufficiency.
- 1068. Trial.
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- 1070. — Questions of law or fact.
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XIV. TEMPORARY, SEASONAL, OR PROVISIONAL EMPLOYMENT.

- 1081. In general.
- 1082. Probationary or trial employment in general.
- 1083. Duration and computation of employment period.
- 1084. — In general.
- 1085. — Probationary or trial employment.
- 1086. Employment practices; adverse action.
- 1087. — In general.
- 1088. — Removal, separation, termination, and discharge in general.
- 1089. — Suspension or other discipline in general.
- 1090. — Exercise of rights; retaliation.
- 1091. — Reporting or opposing wrongdoing; whistleblowing.
- 1092. — Layoffs, furloughs, and reductions in force.
- 1093. — Promotion, demotion, assignment, and transfer.
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317. PUBLIC LANDS**XIV. TEMPORARY, SEASONAL, OR PROVISIONAL EMPLOYMENT.(Cont'd)**

- 1095. — Compensation, pensions, and benefits.
- 1096. Proceedings.
- 1097. — In general.
- 1098. — Procedural requirements and protections in general.
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- 1101. — Actions.
- 1102. Authority and powers.
- 1103. Duties and liabilities.
- 1104. — In general.
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- 1106. Criminal responsibility.

XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES.

- 1111. In general.
- 1112. Creation and duration of employment relationship.
- 1113. Rights and privileges in general.
- 1114. Employment practices; adverse action.
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- 1116. — Removal, separation, termination, and discharge in general.
- 1117. — Suspension or other discipline in general.
- 1118. — Exercise of rights; retaliation.
- 1119. — Reporting or opposing wrongdoing; whistleblowing.
- 1120. — Layoffs, furloughs, and reductions in force.
- 1121. — Promotion, demotion, assignment, and transfer.
- 1122. — Constructive adverse action.
- 1123. — Compensation, pensions, and benefits.
- 1124. Proceedings.
- 1125. — In general.
- 1126. — Procedural requirements and protections in general.
- 1127. — Review by administrative agencies, boards, and commissions; civil service or merit system proceedings.
- 1128. — Judicial review or intervention.
- 1129. — Actions.

XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES.(Cont'd)

- 1130. Authority and powers.
- 1131. Duties and liabilities.
- 1132. — In general.
- 1133. — Immunity.
- 1134. Criminal responsibility.

317. PUBLIC LANDS**SUBJECTS INCLUDED**

Lands forming part of the public domain

Regulations relating thereto

Grants thereof

Acquisition by private owners of title thereto or rights therein, under grants or statutory provisions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Commons, see COMMON LANDS

Mines and minerals in public lands, see MINES AND MINERALS

Navigable waters, lands under, see WATER LAW

I. GOVERNMENT OWNERSHIP, ¶1–21.

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES, ¶22–141.

(A) SURVEYS, ¶22–28.

(B) ENTRIES, SALES, AND POSSESSORY RIGHTS, ¶29–41.

(C) DONATIONS AND BOUNTY LANDS, ¶42–46.

(D) RESERVATIONS TO UNITED STATES, ¶47–50.

(E) SCHOOL AND UNIVERSITY LANDS, ¶51–57.

(F) SWAMP AND OVERFLOWED LANDS, ¶58–61.

(G) GRANTS TO STATES FOR INTERNAL IMPROVEMENTS, ¶62–66.

(H) GRANTS IN AID OF RAILROADS, ¶67–93.

(I) PROCEEDINGS IN LAND OFFICE, ¶94–109.

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317. PUBLIC LANDS

- II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES—Cont'd
- (K) REMEDIES IN CASES OF FRAUD, MISTAKE, OR TRUST, ¶118–130.
- (L) RELIEF OF BONA FIDE SETTLERS AND CLAIMANTS, ¶131–134.
- (M) CONVEYANCES, CONTRACTS, AND EXEMPTIONS, ¶135–141.
- III. DISPOSAL OF LANDS OF THE STATES, ¶142–187.5.
- IV. COLONIAL AND PROPRIETARY GRANTS, ¶188–196.5.
- V. SPANISH, MEXICAN, FRENCH, AND RUSSIAN GRANTS, ¶197–224.5.
- VI. TITLES DERIVED FROM INDIANS, ¶225–229.

I. GOVERNMENT OWNERSHIP.

1. Origin and nature of title in general.
2. Cessions and treaties.
3. Extinguishment of Indian title.
4. What are lands of the United States.
5. What are lands of the states.
6. Constitutional and statutory provisions.
7. Governmental authority and control.
8. Trespasses in general.
9. Cutting and removing timber.
- 9.1. — In general.
10. — Statutory regulations.
11. — Illegal cutting or removal.
12. — Right to timber cut.
13. — Recovery of timber or damages.
14. — Penalties and forfeitures.
15. — Criminal prosecutions.
16. — Timber on state lands.
- 16.5. Sale of timber.
17. Pasturage and hay.
18. Crops.
19. Inclosure.
20. Improvements.
21. Offenses incident to disposal of public lands.

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES.**(A) SURVEYS.**

22. Surveyors general and deputy surveyors.
23. Necessity of survey.
24. Method and sufficiency.
25. Operation and effect in general.

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES.(Cont'd)

26. Errors and omissions.
 27. Conflicting surveys.
 28. Resurveys.
- (B) ENTRIES, SALES, AND POSSESSORY RIGHTS.**
29. Lands subject to entry.
 30. Persons capable to enter or acquire lands.
 31. Rights acquired by occupancy.
 32. Rights acquired by entry in general.
 33. Sales.
 34. Pre-emption.
 35. Homestead.
 - (1). In general.
 - (2). Entry and commutation.
 - (3). Residence on and cultivation of land entered.
 - (4). Death of homesteader.
 - (5). Rights acquired.
 - (6). Rights of wife in homestead entered by husband.
 36. Timber culture.
 37. Desert lands.
 38. Timber and stone lands.
 39. Town sites.
 - (1). In general.
 - (2). Lands included or subject to entry as town site.
 - (3). Entry and occupancy.
 - (4). Right and title acquired by entry or patent.
 - (5). Execution of trust in general.
 - (6). Survey, plat, and statement of claim.
 - (7). Persons entitled to benefit of entry.
 - (8). Adverse claims and conveyances.
 40. Abandonment or relinquishment of claim.
 41. Evidence.

(C) DONATIONS AND BOUNTY LANDS.

42. Grants by Congress in general.
43. New Madrid act.
44. Oregon donation act.
45. Particular grants and donations.
46. Bounty land warrants.

(D) RESERVATIONS TO UNITED STATES.

47. Mode and effect in general.

317. PUBLIC LANDS**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 48. Public grounds and buildings.
- 49. Parks, woods, and springs.
- 50. Military reservations.

(E) SCHOOL AND UNIVERSITY LANDS.

- 51. Effect of reservation and grant to state in general.
- 52. Lands included.
- 53. Indemnity and lieu lands.
- 54. Sale and conveyance by state.
 - (1). In general.
 - (2). Lands subject to sale and conditions precedent.
 - (3). Pre-emption and right to purchase.
 - (4). Petition, vote, or consent of inhabitants or public officers.
 - (5). Application of purchaser and contest thereof.
 - (6). Price and payment or recovery thereof.
 - (7). Default, forfeiture, and resale.
 - (8). Sale for taxes and right of purchaser.
 - (9). Patents.
 - (10). Title and rights of purchaser and adverse claims.
- 55. Leases by state.
- 56. Improvements.
- 57. Disposition of proceeds.

(F) SWAMP AND OVERFLOWED LANDS.

- 58. Construction and operation of grant to state in general.
- 59. Lands included in grant.
- 60. Survey, selection, and certification to state.
- 61. Sale and conveyance by state or county.
 - (1). In general.
 - (2). Survey, selection, and certification to state as prerequisite to sale.
 - (3). Appropriation to aid internal improvements.
 - (4). Conveyance in aid of railroads.
 - (5). Mode and validity of sale and right to purchase.
 - (6). Application of purchaser and contest thereof.

**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- (7). Occupation and improvement.
- (8). Rights acquired.
- (9). Consideration.
- (10). Default and forfeiture.
- (11). Certificates, patents, or other conveyances.
- (12). Relief to purchaser or claimant.
- (13). Rescission or annulment.
- (14). Curative acts.
- (15). Disposition of proceeds.

**(G) GRANTS TO STATES FOR INTERNAL
IMPROVEMENTS.**

- 62. Construction and operation of grant in general.
- 63. Lands included in grant.
- 64. Grants in aid of particular improvements.
- 65. Improvements to which proceeds of lands may be applied.
- 66. Sale and conveyance by state.

(H) GRANTS IN AID OF RAILROADS.

- 67. Construction and operation of grant to state.
 - 67.1. — In general.
- 68. — Title and rights of state.
- 69. — Grant by state to railroad company.
- 70. Construction and operation of grant to railroad company in general.
- 71. Vesting of title in railroad company.
- 72. Sufficiency of location and adoption of line.
- 73. Lands included in grant.
- 74. Reservations and exceptions.
- 75. — In general.
- 76. — Indian reservations.
- 77. — Spanish or Mexican grants.
- 78. — Mineral lands.
- 79. — Lands entered for pre-emption or homestead.
- 80. Withdrawal of lands from public entry or sale.
- 81. Indemnity and lieu lands.
 - (1). In general.
 - (2). Vesting of title.
 - (3). Withdrawal from entry or sale.
- 82. Survey, selection, and certification of lands.

317. PUBLIC LANDS**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 83. Transfer of and succession to right to lands.
 - 84. Conditions of grant.
 - 84.1. — In general.
 - 85. — Construction and operation in general.
 - 86. — Performance.
 - 87. — Partial performance.
 - 88. Forfeiture and revocation of grant.
 - (1). In general.
 - (2). Effect of forfeiture and disposition of lands forfeited.
 - 89. Purchasers from company.
 - (1). In general.
 - (2). Cancellation of certification or patent after sale by company.
 - (2.1). — In general.
 - (3). — Persons entitled to relief in general.
 - (4). — Citizenship of purchaser.
 - 90. Mortgages by company.
 - 91. Conflicting grants.
 - 92. Grant of right of way.
 - 93. Grant of right to timber and other materials.
- (I) PROCEEDINGS IN LAND OFFICE.**
- 94. Land districts and land offices.
 - 95. Registers and receivers.
 - 96. Authority and duties of officers in general.
 - 97. Mode and rules of procedure in general.
 - 98. Making and record of entries, and proceedings thereon.
 - 99. Duties and proceedings as to sales.
 - 100. Duties and proceedings as to location of grants or warrants.
 - 101. Suspension of entries.
 - 102. Cancellation of entries, receipts, certificates, and warrants.
 - 103. Determination of adverse claims.
 - (1). In general.
 - (2). Occupancy pending determination.
 - (3). Rights acquired by contest.
 - (4). Jurisdiction of courts.
 - 104. Appeals from decisions of register and receiver.

**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 105. Conclusiveness and effect of decisions.
- 106. — In general.
 - (1). In general.
 - (2). Errors of law.
 - (3). Fraud, imposition, or mistake.
 - (4). Registers and receivers.
- 107. — Commissioner of General Land Office.
- 108. — Secretary of the Interior.
- 109. Actions and proceedings to set aside decisions.

(J) PATENTS.

- 110. Right to and necessity for patent in general.
- 111. Issuance.
- 112. Delivery, acceptance, and record.
- 113. Requisites and validity.
- 114. Construction and operation in general.
 - (1). In general.
 - (2). Relation back.
 - (3). Property included.
 - (4). Conditions and exceptions.
 - (5). Patent issued after death of settler.
 - (6). Presumptions as to issuance and validity.
- 115. Conclusiveness.
- 116. — In general.
- 117. — Collateral attack.

**(K) REMEDIES IN CASES OF FRAUD,
MISTAKE, OR TRUST.**

- 118. Cancellation of certification to state.
- 119. Cancellation of patent.
- 119.1. — In general.
- 120. — Suit by United States.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Right of action and defenses in general.
 - (3). Mistake or error.
 - (4). Fraud or perjury.
 - (4.1). — In general.
 - (5). — Acquisition of mineral lands.
 - (6). — Acquisition of homestead lands.
 - (7). Conditions precedent.

317. PUBLIC LANDS**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- (8). Jurisdiction.
- (9). Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

- (10). Parties.
- (11). Pleading.
- (12). Issues, proof, and variance.
- (13). Presumptions and burden of proof.
- (14). Admissibility of evidence.
- (15). Weight and sufficiency of evidence.
- (15.1). — In general.
- (16). — Fraud, perjury, or mistake in general.
- (17). — Acquisition of mineral lands.
- (18). — Acquisition of homestead lands.
- (19). — Good faith of subsequent purchasers.
- (20). Judgment or decree and relief awarded.
- (21). Review.
- (22). Operation and effect of cancellation.

- 121. — Suit by state.
- 122. — Suit by third person.
- 123. Recovery of price by United States.
- 124. Relief to claimant of land.
- 124.1. — In general.
- 125. — Equitable relief in general.
- 126. — On ground of fraud.
- 127. — On ground of mistake.
- 128. — Establishment of trust.
- 129. — Quieting title.
- 130. — Recovery of money paid.

**(L) RELIEF OF BONA FIDE SETTLERS
AND CLAIMANTS.**

- 131. Persons protected as bona fide settlers or occupying claimants.
- 132. Protection and relief in general.
- 133. Right to purchase land.
- 134. Compensation for improvements.

**(M) CONVEYANCES, CONTRACTS,
AND EXEMPTIONS.**

- 135. Assignments and transfers of rights in general.
 - (1). In general.
 - (2). Homestead right.
 - (3). Claims under town-site laws.
 - (4). Bounty and school lands.
 - (5). Form and requisites of transfer or assignment.
- 136. Mortgages.
- 137. Sale of improvements.
- 138. Bona fide purchasers.
- 139. Validity of contracts.
- 140. Exemption of lands from liability for debts.
- 141. Persons entitled to question validity.

III. DISPOSAL OF LANDS OF THE STATES.

- 142. In general.
- 142.1. Alabama.
- 142.2. Alaska.
- 142.5. Arizona.
- 143. Arkansas.
- 144. California.
 - (1). In general.
 - (2). Application or affidavit for purchase and survey.
 - (3). Contests and determination of right to acquire lands.
 - (4). Certificates and patents and forfeiture or cancellation thereof.
 - (5). Curative acts.
- 145. Colorado.
- 146. Connecticut.
- 147. Delaware.
- 147.5. Florida.
- 148. Georgia.
- 148.1. Hawaii.
- 148.5. Idaho.
- 149. Illinois.
- 150. Indiana.
- 150.1. Iowa.
- 150.5. Kansas.
- 151. Kentucky.
 - (.5). In general.
 - (1). Nature and amount of land subject to appropriation.
 - (2). Rights of settlers and occupants.

317. PUBLIC LANDS**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- (3). Designation or description of lands entered.
- (4). Warrant and survey.
- (5). Caveat.
- (6). Patents.
- (7). Conflicting entries, claims, or patents.
- (8). Curative acts.
- 152. Louisiana.
- 153. Maine.
- 154. Maryland.
- 155. Massachusetts.
- 156. Michigan.
- 156.5. Minnesota.
- 157. Mississippi.
- 158. Missouri.
- 158.5. Montana.
- 159. Nebraska.
- 160. Nevada.
- 161. New Hampshire.
- 162. New Jersey.
- 162.5. New Mexico.
- 163. New York.
- 164. North Carolina.
- 164.5. North Dakota.
- 165. Ohio.
- 165.5. Oklahoma.
- 166. Oregon.
- 167. Pennsylvania.
- 168. Rhode Island.
- 169. South Carolina.
- 169.5. South Dakota.
- 170. Tennessee.
 - (.5). In general.
 - (1). Right of entry and nature and extent of land subject thereto.
 - (2). Entry, survey, and certification.
 - (3). Validity and effect of grant.
 - (4). Conflicting entries and grants.
- 171. Texas.
- 172. — In general.
- 172.1. — Rights acquired by occupancy.
- 172.2. — Power to regulate disposition in general.
- 172.3. — Right to purchase lands subject to sale.

**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- 172.4. — Conflicting claims of applicants to purchase.
- 172.5. — Payment by purchaser.
- 172.6. — Pre-emption and homestead.
- 172.7. — Headright claims; settlements and contracts under colonization laws.
- 172.8. — Abandonment, forfeiture or loss of claims or rights acquired.
- 172.9. — Lease.
- 172.10. — Donations and bounties, in general.
- 172.11. — Donations, grants or reservations in aid of railroads.
- 173. — School, university, and asylum lands.
 - (.5). In general.
 - (1). Reservation or appropriation of lands in general.
 - (2). Grants to counties.
 - (3). Sale in general.
 - (4). Classification, appraisal, listing, and notice of sale.
 - (5). Right to purchase in general.
 - (6). Settlement on and occupancy of land.
 - (7). Preferential right to purchase.
 - (8). Lands subject to sale.
 - (8.1). — In general.
 - (9). — Leased lands.
 - (10). Application to purchase in general.
 - (11). Payment of price.
 - (12). Sale of detached and isolated lands.
 - (13). Purchase of additional land by actual settlers.
 - (14). Sale of land granted to counties.
 - (15). Sale of timber.
 - (16). Conflicting applications.
 - (16.1). Actions.
 - (16.2). — In general; jurisdiction.
 - (16.3). — Limitations and laches.
 - (16.4). — Parties.
 - (17). — Pleading.
 - (18). — Evidence.
 - (19). — Judgment, trial and review.
 - (20). Abandonment.

317. PUBLIC LANDS**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- (21). Forfeiture, cancellation, and re-sale.
- (21.1). — In general.
- (22). — Relief from forfeiture and reinstatement.
- (23). Curative acts.
- (24). Lease.
- (24.1). — In general.
- (25). — Registration.
- (26). — Use of demised premises.
- (27). — Cancellation and release.
- 174. — Land certificates.
- 175. — Location and survey.
 - (.5). In general.
 - (1). Lands subject to location.
 - (2). Requisites and validity in general.
 - (3). Time for location and survey.
 - (4). Location or survey under certificate owned jointly.
 - (5). Construction, operation, and effect.
 - (6). Errors, omissions, and curative acts.
 - (7). Conflicting locations and surveys and priorities.
- 176. — Grants, conveyances, or patents by state or county.
 - (.5). In general.
 - (1). Issuance, requisites, and validity.
 - (2). Construction, operation, and conclusiveness.
- 177. — Remedies in cases of fraud, mistake, or trust.
- 178. — Conveyances and contracts by grantees, patentees, or occupants.
 - (.5). In general.
 - (1). Assignments and transfers of title and rights in general.
 - (2). Transfers by purchasers of school lands.
 - (3). Sales or transfers of certificates and warrants.
 - (4). Contracts and leases.
- 179. — Relief to bona fide settlers and claimants.
- 180. — Land officers and proceedings thereof.
- 181. Utah.

**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- 182. Vermont.
- 183. Virginia.
- 184. Washington.
- 184.5. — In general.
- 185. — Tide and shore lands.
 - (1). In general.
 - (2). Classification and appraisalment.
 - (3). Sale.
 - (4). Lease.
 - (5). Review of proceedings of land officers.
 - (6). Disposition of proceeds.
 - (7). Land officers.
- 186. West Virginia.
- 187. Wisconsin.
- 187.5. Wyoming.

IV. COLONIAL AND PROPRIETARY GRANTS.

- 188. Colonial charters and grants from the crown.
- 189. Grants, concessions, and patents from colonial governments or proprietors.
- 189.1. — In general.
- 190. — Power to make.
- 191. — Mode of making, requisites, and validity.
- 192. — Construction and operation in general.
- 193. — Lands included.
- 194. — Use and disposal of lands by municipalities.
- 195. — Perfection and confirmation of title.
- 196. — Title and rights acquired.
- 196.5. — Evidence of grant.

**V. SPANISH, MEXICAN, FRENCH,
AND RUSSIAN GRANTS.**

- 197. Recognition and enforcement by United States in general.
- 198. Cessions and treaties.
- 199. Power to make in general.
- 200. Persons capable to acquire lands.
- 201. Proceedings to obtain in general.
- 202. Settlements and contracts under colonization laws.
- 203. Mode of making, requisites, and validity.
- 204. Construction and operation in general.

317. PUBLIC LANDS**V. SPANISH, MEXICAN, FRENCH, AND
RUSSIAN GRANTS.(Cont'd)**

- 205. Parties entitled.
- 206. Lands included.
- 207. Performance of conditions.
- 208. Confirmation by government making grant.
- 209. Forfeiture, revocation, or abandonment of grant or claim to confirmation.
- 210. Record and evidence of grant.
- 211. Confirmation by act of Congress or state.
- 212. Powers of and proceedings in land office.
- 213. Determination of claims by courts in general.
- 214. Commissioners to determine and settle claims.
- 214.1. — In general.
- 215. — Creation and constitution of commission.
- 216. — Jurisdiction, powers, and functions.
- 217. — Presentation of claims.
- 218. — Proceedings and determination.
- 219. — Review by courts.
- 220. Court of Private Land Claims.
- 221. Location and survey on confirmation or precedent thereto.
- 222. Patent in confirmation of grant.
- 223. Title and rights acquired.
 - (.5). In general.
 - (1). By grant from former government.
 - (2). By confirmation or rejection of claim.
 - (2.1). — In general.
 - (3). — Claims of third persons and priorities.
 - (4). — Persons benefited and lands included.
 - (5). — Indemnity in case of sale or partial loss of title.
 - (6). Assertion and enforcement.
 - (7). Assignment and transfer.
- 224. Claimant preferred as purchaser on rejection of claim.
- 224.5. Lands granted to cities, towns, pueblos, or other communities, or to their inhabitants.

VI. TITLES DERIVED FROM INDIANS.

- 225. Validity of grants.
- 226. Evidence to establish.
- 227. Construction and operation of grants.
- 228. Acquisition and perfection of title.
- 229. Title and rights acquired.

317A. PUBLIC UTILITIES**SUBJECTS INCLUDED**

- Public utilities or public service corporations generally
- Boards or commissions created to supervise public service corporations or public utilities
- Qualification and tenure of members of such boards or commissions
- Their rights, privileges, and duties in general
- Their jurisdiction and powers in respect to public utilities generally
- Proceedings before them in the exercise of such general powers
- Review of their acts and orders in general by courts

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

- Administrative law generally, see ADMINISTRATIVE LAW AND PROCEDURE
- Interstate Commerce Commission, and regulation by state or local boards as interference with interstate commerce, see COMMERCE
- Particular classes of public service corporations, and proceedings before the commission relating to such peculiar matters, including review by courts, see CARRIERS, ELECTRICITY, GAS, MINES AND MINERALS, RAILROADS, TELECOMMUNICATIONS, and other specific topics
- Particular matters relating to corporations generally, see CORPORATIONS AND BUSINESS ORGANIZATIONS

I. IN GENERAL, 101-110.

317A. PUBLIC UTILITIES

- II. REGULATION, ☞111–140.
- III. PUBLIC SERVICE COMMISSIONS OR BOARDS, ☞141–210.
 - (A) IN GENERAL, ☞141–160.
 - (B) PROCEEDINGS BEFORE COMMISSIONS, ☞161–180.
 - (C) JUDICIAL REVIEW OR INTERVENTION, ☞181–210.
- IV. PUBLIC UTILITY HOLDING COMPANY SYSTEM REGULATION, ☞211–216.

I. IN GENERAL.

- 101. In general.
- 102. Constitutional and statutory provisions.
- 103. Public service companies in general.

II. REGULATION.

- 111. In general.
- 112. Entities subject to regulation.
- 113. Certificates, permits, and franchises.
- 114. Service and facilities.
- 115. Contracts.
- 116. Accounting systems.
- 117. Securities.
- 118. Transfer of property or franchises; consolidation.
- 119. Regulation of charges.
- 119.1. — In general.
- 120. — Nature and extent in general.
- 121. — Service within municipalities; charges fixed by contract or ordinance.
- 122. — Mode of regulation.
- 123. — Reasonableness of charges in general.
- 124. — Value of property; rate base.
- 125. — Reproduction cost.
- 126. — Going value.
- 127. — Depreciation.
- 128. — Operating expenses.
- 129. — Rate of return.
- 130. — Temporary or emergency charges.

III. PUBLIC SERVICE COMMISSIONS OR BOARDS.**(A) IN GENERAL.**

- 141. Nature and status.
- 142. Appointment or election, and qualification and tenure.
- 143. Rights and privileges.
- 144. Compensation.

III. PUBLIC SERVICE COMMISSIONS OR BOARDS. (Cont'd)

- 145. Powers and functions.
- 145.1. — In general.
- 146. — Legislative and judicial powers and functions.
- 147. — Statutory basis and limitation.
- 148. Exclusive and concurrent powers.
- 149. Rules.
- 150. Meetings.

(B) PROCEEDINGS BEFORE COMMISSIONS.

- 161. In general.
- 162. Notice and appearance.
- 163. Parties.
- 164. Pleading.
- 165. Evidence.
- 166. Production and inspection of books and writings.
- 167. Hearing and rehearing.
- 168. Findings.
- 169. Orders.
- 169.1. — In general.
- 170. — Collateral attack.
- 171. — Enforcement by commission in general.
- 172. — Contempt.

(C) JUDICIAL REVIEW OR INTERVENTION.

- 181. Jurisdiction of courts in advance of or pending proceedings before commission.
- 182. Enforcement or prevention of enforcement by courts of orders of commission.
- 183. — In general.
- 184. — Trial or hearing, and evidence.
- 185. — Presumptions in favor of order or findings of commission.
- 186. — Determination of cause, review and remand to commission.
- 187. Actions to set aside orders of commissions.
- 188. Appeal from orders of commission.
- 189. — In general.
- 190. — Decisions reviewable.
- 191. — Right of review.
- 192. — Requisites and proceedings for transfer of cause.
- 193. — Record.

317A. PUBLIC UTILITIES**III. PUBLIC SERVICE COMMISSIONS
OR BOARDS.**(Cont'd)

- 194. — Review and determination in general.
- 195. — Presumptions in favor of order or findings of commission.
- 196. — Remand of cause to commission.
- 197. Certiorari to review orders of commission.

**IV. PUBLIC UTILITY HOLDING COMPANY
SYSTEM REGULATION.**

- 211. In general.
- 212. Declaration as to status of systems.
- 213. Simplification of systems.
- 214. Solicitation of proxies.
- 215. Court review of administrative decisions.
- 216. Fees and expenses.

318. QUIETING TITLE**SUBJECTS INCLUDED**

Actions for determination of conflicting claims to real property or removal of clouds on title thereto, whether under the jurisdiction of courts of equity or under statutory provisions

Statutory actions to determine adverse claims to money or personal property

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property, rights, and claims they may be maintained

Procedure therein, incidental relief, judgments or decrees, and enforcement thereof

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

New trials as of right in statutory actions for determination of adverse claims, see **NEW TRIAL**

Trespass to try title, actions of, see **TRESPASS TO TRY TITLE**

I. RIGHT OF ACTION AND DEFENSES,
⌘1–26.**II. PROCEEDINGS AND RELIEF,**
⌘27–54.**I. RIGHT OF ACTION AND DEFENSES.**

- 1. Nature and scope of remedy.
- 2. Property subject of action.
- 3. Grounds for relief in equity in general.
- 4. Inadequacy of remedy at law.
- 5. Prevention of multiplicity of suits.
- 6. Adverse claim of title.
- 7. Cloud on title.
 - (1). In general.
 - (2). Deeds, mortgages, and other written instruments.
 - (3). Void instruments.
 - (4). Claims based on judicial proceedings and sales.
 - (5). Taxes and assessments.
 - (6). Claim of dower.
- 8. Prevention of threatened cloud on title.
- 9. Title of plaintiff.
- 10. — In general.
- 10.1. — Necessity of having title or interest.
- 10.2. — Sufficiency in general.
- 10.3. — Purchasers under contract.
- 10.4. — Rights founded on possession.
- 10.5. — Mortgagors and mortgagees.
- 11. — Establishment by action at law.
- 12. Possession of plaintiff.
 - (.5). In general.
 - (1). Necessity.
 - (2). Remedy at law of plaintiff out of possession.
 - (3). Ground for equitable jurisdiction where plaintiff is out of possession.
 - (4). Equitable title of plaintiff.
 - (5). Waiver of objection to want of possession.
 - (6). Remaindermen and reversioners.
 - (7). Sufficiency of possession in general.
 - (8). Vacant and unoccupied lands.
 - (9). Peaceable and undisputed possession.
 - (10). Possession by lessee or agent of plaintiff.

319. QUO WARRANTO**I. RIGHT OF ACTION AND DEFENSES.(Cont'd)**

13. Possession of defendant.
14. Conditions precedent.
15. Defenses.
16. Persons entitled to relief.
17. Persons as against whom relief may be granted.
18. Statutory remedies for determination of adverse claims.
- 18.1. — In general.
19. — Nature and scope.
20. — Grounds in general.
21. — Adverse claim.
22. — Title of plaintiff.
23. — Possession of plaintiff in general.
24. — Vacant or unoccupied lands.
25. — Defenses.
26. Statutory remedies to compel bringing of action.

II. PROCEEDINGS AND RELIEF.

27. Form of remedy.
28. Jurisdiction and venue.
29. Limitations and laches.
See also LIMITATION OF ACTIONS.
30. Parties.
 - (1). In general.
 - (2). Proper parties.
 - (3). Necessary parties.
31. Process.
32. Injunction, receiver, and use of property pending proceedings.
33. Pleading.
 - 33.1. — In general.
34. — Bill, complaint, or petition in general.
 - (1). In general.
 - (2). Allegations as to inadequacy of remedy at law.
 - (3). Allegations as to parties.
 - (4). Offer to do equity.
 - (5). Allegations as to cloud or adverse claim of defendant.
35. — Allegations as to title and possession.
 - (1). In general.
 - (2). Title.
 - (3). Possession.
36. — Description of property.

II. PROCEEDINGS AND RELIEF.(Cont'd)

37. — Plea or answer.
 - (1). In general.
 - (2). Bond prerequisite to plea or answer.
38. — Disclaimer.
39. — Cross-bill, cross-complaint, or counterclaim, and plea or answer thereto.
40. — Replication or reply.
41. — Demurrer.
42. — Amended and supplemental pleadings.
43. — Issues, proof, and variance.
44. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Sufficiency of evidence of title.
 - (5). Sufficiency of evidence of possession.
45. Dismissal before hearing.
46. Scope of inquiry and powers of court.
47. Trial or hearing.
 - (1). In general.
 - (2). Verdict and findings.
48. Scope and extent of relief.
49. — In general.
50. — Alternative, additional, or incidental relief to plaintiff.
51. — Relief to defendant.
52. Judgment or decree and enforcement thereof.
54. Costs.

319. QUO WARRANTO**SUBJECTS INCLUDED**

Writs of quo warranto and proceedings by information or action in the nature of writs of quo warranto to try title to offices, franchises, etc.

Nature and scope of the remedy in general

319. QUO WARRANTO

Grounds of such writs or proceedings and defenses thereto

To and against whom, and as to what offices, franchises, etc., they are allowed

Jurisdiction over and proceedings on such writs, informations, or actions

Judgments and enforcement thereof, and costs in such proceedings

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Rights to and forfeiture of offices, franchises, etc., see PUBLIC EMPLOYMENT, FRANCHISES, CORPORATIONS AND BUSINESS ORGANIZATIONS, and topics relating to particular classes of officers and corporations

- I. NATURE AND GROUNDS, ¶1–25.
II. PROCEDURE, ¶26–64.

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedies.
4. Adequacy of remedy by quo warranto.
5. Exclusiveness of remedy by quo warranto.
6. Discretion of court as to remedy.
7. Exercise of franchise or privilege in general.
8. Exercise of powers by municipality.
9. Exercise of public office.
10. — In general.
11. — Trial of title to office.
12. — Usurpation of or intrusion into office.
13. — Acts in excess of authority.
14. — Forfeiture of and removal from office.
15. Exercise of corporate franchises and powers.
16. — In general.
17. — Usurpation of corporate franchise.
18. — Acts in excess of corporate powers.
19. — Forfeiture of franchise and dissolution of corporation.
20. Exercise of corporate office.
21. Exercise of private rights.
22. Defenses and grounds of opposition.
23. Abatement of proceedings.

I. NATURE AND GROUNDS.(Cont'd)

24. Persons entitled to relief.
25. Persons as against whom relief may be granted.

II. PROCEDURE.

26. Form of remedy and conditions precedent.
27. Jurisdiction.
28. Venue.
29. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
30. Parties plaintiff or petitioners.
31. — In general.
32. — Use of name of state.
33. — Public officers.
34. — Private persons.
35. — Joinder.
36. — Rights as to control of proceedings.
37. Parties defendant or respondents.
38. — In general.
39. — Joinder.
40. Intervention or substitution of parties.
41. Leave of court or order to sue.
- 41.1. — In general.
42. — Necessity.
43. — Application and proceedings thereon.
44. Consent of state officers.
45. Writ or other process or rule to plead.
46. Pleading.
- 46.1. — In general.
47. — Mode and form in general.
48. — Information.
49. — Complaint or petition.
50. — Plea or answer.
- (1). In general.
- (2). In proceedings to determine right to public office.
51. — Replication or reply and subsequent pleadings.
52. — Demurrer.
53. — Amended and supplemental pleadings.
54. — Issues, proof, and variance.
55. Evidence.
56. Quashing or dismissal before hearing.
57. Scope of inquiry and powers of court.
58. Trial or hearing.

319H. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**II. PROCEDURE.**(Cont'd)

59. New trial or rehearing.
60. Scope and extent of relief.
61. Judgment or order and enforcement thereof.
62. Appeal and error.
63. Costs.
64. Operation and effect of ouster or forfeiture.

**319H. RACKETEER INFLUENCED
AND CORRUPT ORGANIZA-
TIONS**
SUBJECTS INCLUDED

Civil and criminal liability arising from conducting the affairs of an enterprise through a pattern of racketeering or unlawful activity

Acquiring or maintaining an interest in an enterprise through racketeering or unlawful activity

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Criminal and tort liability generally of associations, corporations, and partnerships, see **ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP**, and specific heads covering particular crimes and torts

Conspiracies, see **CONSPIRACY**

Engaging in a continuing criminal enterprise in violation of the Drug Abuse Prevention and Control Act, see **CONTROLLED SUBSTANCES**

Engaging in interstate and foreign travel or transportation in aid of racketeering enterprises, see **COMMERCE**

I. FEDERAL REGULATION, ⚭1–99.

(A) **IN GENERAL,** ⚭1–54.

(B) **CIVIL REMEDIES AND PROCEEDINGS,** ⚭55–89.

(C) **CRIMINAL REMEDIES AND PROCEEDINGS,** ⚭90–99.

II. STATE REGULATION, ⚭100–124.**II. STATE REGULATION—Cont'd**

(A) **IN GENERAL,** ⚭100–109.

(B) **CIVIL REMEDIES AND PROCEEDINGS,** ⚭110–118.

(C) **CRIMINAL REMEDIES AND PROCEEDINGS,** ⚭119–124.

I. FEDERAL REGULATION.**(A) IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions.
3. Elements of violation in general.
Effect on interstate commerce, see also COMMERCE
⚭82.60.
4. Racketeering or criminal activity.
 - 4.1. — In general.
5. — Predicate acts in general.
Excludes number required to constitute a pattern, see
⚭25 below, *and dual use of predicate offense, see*
CRIMINAL LAW ⚭29.
6. — What are predicate acts; racketeering or criminal activity.
7. — Particular acts.
8. — Extortion.
9. — Bribery.
10. — Fraud in general.
- 10.5. — Mail and wire fraud.
11. — Securities or commodities law violations.
12. — Labor law violations.
13. — Drug related activity.
14. — Collection of unlawful debts.
15. — Conspiracies.
16. — Investment or use of funds derived from racketeering or criminal activity.
17. — Effect of dismissal.
18. — Effect of limitations periods.
19. — Necessity of conviction.
20. — Misdemeanors.
21. — Aiding and abetting.
22. — Financial or economic purpose.
23. — Foreign activity.
24. Pattern of activity.
25. — In general.
26. — Number of predicate acts.
27. — Number of schemes, goals, episodes, or transactions.
28. — Continuity or relatedness; ongoing activity.
29. — Time and duration.

319H. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**I. FEDERAL REGULATION.(Cont'd)**

- 30. — Number of persons involved or victimized.
- 31. — Multiple mailings or communications; mail or wire fraud.
- 32. — Securities or commodities law violations.
- 33. Enterprise.
- 34. — In general.
- 35. — What constitutes enterprise in general.
- 36. — Informal entities; associations-in-fact.
- 37. — Legitimacy; connection with organized crime.
- 38. — Separateness from predicate acts, pattern, or persons.
- 39. — Particular enterprises.
- 40. — Employers and employees.
- 41. — Husbands and wives.
- 42. — Law or accounting firms.
- 43. — Banks or other financial institutions.
- 44. — Brokers and dealers.
- 45. — Labor organizations.
- 46. — Governmental entities.
- 47. — Professional, business, or trade associations.
- 48. — Decedents' estates.
- 49. Nexus between enterprise and acts.
- 50. Association with or participation in enterprise; control or intent.
Excludes vicarious liability and aider or abettor liability, see ¶64 below.

(B) CIVIL REMEDIES AND PROCEEDINGS.

- 55. In general.
- 55.5. Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
- 56. Persons entitled to sue or recover.
- 57. — In general.
- 58. — Injury in general.
- 59. — Business, property, or proprietary injury; personal injuries.
- 60. — Competitors; competitive injury.
- 61. — Shareholders or other investors; creditors.
- 62. — Causal relationship; direct or indirect injury.

I. FEDERAL REGULATION.(Cont'd)

- 63. — Separate or distinct racketeering or criminal enterprise injury.
- 64. Persons liable.
Excludes questions concerning association with or participation in enterprise, see ¶50, above. Includes questions of vicarious liability, aiding and abetting, and liability of enterprise itself.
- 65. Time to sue; limitation of actions.
- 66. Parties.
- 67. Process.
- 68. Pleading.
- 69. — In general.
- 70. — Racketeering or criminal activity; predicate acts.
- 71. — Investment or use of funds.
- 72. — Pattern.
- 73. — Enterprise.
- 74. — Association or participation.
- 75. — Injury; causation.
- 76. Evidence.
- 76.1. — In general.
- 77. — Presumptions and burden of proof.
- 78. — Admissibility.
- 79. — Weight and sufficiency.
- 80. Trial or hearing.
- 81. Relief.
Excludes injunctions and restraining orders, see INJUNCTION; declaratory relief, see DECLARATORY JUDGMENT; forfeitures, see FORFEITURES.
- 82. — In general.
- 83. — Disgorgement, divestiture, or restitution.
- 84. — Receivership or trusteeship.
- 85. — Damages.

(C) CRIMINAL REMEDIES AND PROCEEDINGS.

- 90. In general.
- 91. Indictment and information.
- 92. Evidence.
- 92.1. — In general.
- 93. — Presumptions and burden of proof.
- 94. — Admissibility.
- 95. — Weight and sufficiency.
- 96. Trial.
- 97. Instructions.
- 98. Sentence or punishment.
Excludes forfeitures, see FORFEITURES.

320. RAILROADS**II. STATE REGULATION.****(A) IN GENERAL.**

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. Elements of violation in general.
- 103. Racketeering or criminal activity; predicate acts.
- 104. Pattern of activity.
- 105. Enterprise.
- 106. Nexus between enterprise and acts.
- 107. Association with or participation in enterprise; control or intent.

(B) CIVIL REMEDIES AND PROCEEDINGS.

- 110. In general.
- 111. Persons entitled to sue or recover.
- 112. Persons liable.
- 113. Time to sue; limitation of actions.
- 114. Process.
- 115. Pleading.
- 116. Evidence.
- 117. Trial or hearing.
- 118. Relief.

Excludes injunctions and restraining orders, see INJUNCTION; declaratory relief, see DECLARATORY JUDGMENT; forfeitures, see FORFEITURES.

(C) CRIMINAL REMEDIES AND PROCEEDINGS.

- 119. In general.
- 120. Indictment and information.
- 121. Evidence.
- 122. Trial.
- 123. Instructions.
- 124. Sentence and punishment.

320. RAILROADS**SUBJECTS INCLUDED**

Construction, maintenance, regulation, and operation of railroads in general

Organization of railroad companies, and their rights, powers, and liabilities in respect of grants of franchises and public aid, and of the construction and maintenance of their roads and other property, and their ownership and conveyance thereof

Rights and liabilities of their stockholders and officers

Rights, duties and liabilities of railroad companies, as to the public and as to individuals, in respect of the management and operation of their roads, otherwise than in their capacities of employers or carriers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Aid to railroads, powers of states or municipalities, and liabilities incurred by them for that purpose, see STATES, MUNICIPAL CORPORATIONS, COUNTIES, TOWNS

Carriers, regulation of, see CARRIERS

City streets, railroads in, see URBAN RAILROADS

Commerce, regulation of, see COMMERCE

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, power of railroad companies, and rights and remedies of owners of property taken or injured, see EMINENT DOMAIN

Employers, railroad companies as, see LABOR AND EMPLOYMENT

Interstate Commerce Commission, regulation by, see COMMERCE

Passengers and goods, carriage of, see CARRIERS

Public lands, grants of, or of rights of way through, see PUBLIC LANDS

Taxation of railroads, see TAXATION

I. CONTROL AND REGULATION IN GENERAL, ¶1-12.

II. RAILROAD COMPANIES, ¶13-33.

III. PUBLIC AID, ¶34-43.

IV. LOCATION, ¶44-60.

(A) LOCATION OF ROAD, ¶44-57.

(B) LOCATION AND ESTABLISHMENT OF STATIONS, ¶58-60.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND, ¶61-82.

VI. CONSTRUCTION, MAINTENANCE, AND EQUIPMENT, ¶83-117.

VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION, ¶118-144.

VIII. FINANCIAL MATTERS, ¶145-202.

320. RAILROADS**VIII. FINANCIAL MATTERS—Cont'd**
(A) NATURE AND EXTENT OF LIABILITIES, ⚖️145–179.

(B) FORECLOSURE OF LIENS AND MORTGAGES, ⚖️180–202.

IX. RECEIVERS, ⚖️203–213.**X. OPERATION, ⚖️214–487.**

(A) DUTY TO OPERATE, ⚖️214–222.

(B) STATUTORY, MUNICIPAL, AND OFFICIAL REGULATIONS, ⚖️223–255.

(C) COMPANIES AND PERSONS LIABLE FOR INJURIES, ⚖️256–273.

(D) INJURIES TO LICENSEES OR TRESPASSERS IN GENERAL, ⚖️273.5–282.

(E) ACCIDENTS TO TRAINS, ⚖️283–297.

(F) ACCIDENTS AT CROSSINGS, ⚖️298–353.

(G) INJURIES TO PERSONS ON OR NEAR TRACKS, ⚖️354–403.

(H) INJURIES TO ANIMALS ON OR NEAR TRACKS, ⚖️405–452.

(I) FIRES, ⚖️453–487.

I. CONTROL AND REGULATION IN GENERAL.

1. Right to construct and operate railroads in general.

1.5. Establishment or acquisition by public authorities.

2. What constitutes a railroad.

3. Appurtenances as part of railroad.

4. Status of railroads and railroad companies.

5. Power to control and regulate.

5.5. Federal control.

(.5). In general.

(1). Statutory and constitutional provisions.

(2). Possession and control under laws and executive proclamations or orders in general.

(3). Existing contracts.

(4). Rates or charges.

(5). State or municipal regulations of railroads, and proceedings for enforcement.

(6). Rights of action accruing before federal control, and remedies.

(7). Rights of action accruing during federal control, and remedies.

(7.1). — In general.

(8). — Attorney and client.

I. CONTROL AND REGULATION IN GENERAL.(Cont'd)

(9). — Carriage of goods and passengers on railroads.

(10). — Limitation of carrier's liability.

(11). — Assault, false imprisonment, and malicious prosecution.

(12). — Master and servant.

(13). — Workers' compensation for injuries.

(14). — Construction and maintenance.

(15). — Mechanics' liens.

(16). — Accidents at crossing.

(17). — Injuries to animals.

(18). — Fires.

(19). — Liability for damages, penalties, interest, and costs.

(20). — Actions in general.

(21). — Continuance or stay.

(22). — Jurisdiction and venue.

(23). — Parties.

(24). — Change or substitution of parties.

(25). — Process and appearance.

(26). — Attachment or garnishment.

(27). — Injunction.

(28). — Pleadings and evidence.

(29). — Judgment and execution.

(30). — Review.

(31). Condemnation proceedings.

(32). Taxes and assessments.

(33). Offenses.

(34). Consolidation roads.

(35). Express companies under federal control.

(36). Termination of federal control and redelivery of railroads to owners.

(36.1). — In general.

(37). — Status of employees.

(38). — Rights of action and remedies in general.

(39). — Contract rights.

(40). — Carriage of goods.

(41). — Construction or maintenance.

320. RAILROADS**I. CONTROL AND REGULATION
IN GENERAL.**(Cont'd)

- (42). — Actions.
- (43). — Jurisdiction and venue.
- (44). — Limitations.
- (45). — Parties.
- (46). — Change or substitution of parties.
- (47). — Process and appearance.
- (48). — Pleadings and evidence.
- (49). — Judgment and execution.
- (50). — Review.
- (51). Compensation for use of railroads, and guaranty of income.
- (52). Release or settlement by railroad company.
- 5.51. National Railroad Passenger Corporation (AMTRAK).
- 5.52. Consolidated Rail Corporation (Conrail).
- 6. Constitutional and statutory provisions.
- 7. Determination as to necessity for road.
- 8. License fees and taxes.
- 9. Supervision by public officers.
 - (1). In general.
 - (2). Enforcement and review of orders.
- 10. Judicial supervision.
- 11. Penalties for failure to construct or maintain railroad.
- 12. Offenses incident to construction and maintenance of railroad.

II. RAILROAD COMPANIES.

- 13. Nature and formation in general.
- 14. Incorporation, organization, and existence.
- 15. Capital and stock.
- 16. Stockholders.
- 17. Officers and agents.
- 18. Franchises and powers in general.
- 19. Amendment or revocation of charters.
- 20. Actions by or against companies.
- 20.1. — In general.
- 21. — Rights of action and defenses.
- 22. — Jurisdiction and venue.
 - (1). In general.
 - (2). Actions arising from contract.

II. RAILROAD COMPANIES.(Cont'd)

- (3). Actions for injuries to person or property.
- 22.5. — Time to sue and limitations.
See also *LIMITATION OF ACTIONS.*
- 23. — Parties.
- 24. — Process and appearance.
 - (1). In general.
 - (2). Effect of transfer, lease, consolidation, or receivership.
 - (3). Officer or agent on whom service may be made.
 - (4). Form and sufficiency of service and return.
- 25. — Pleading and evidence.
- 26. — Trial.
- 27. — Judgment and enforcement thereof.
- 28. — Appeal and error.
- 29. — Costs.
- 30. Reorganization.
- 31. Abandonment of franchise.
- 32. Forfeiture of franchise and dissolution.
- 33. Foreign companies.
 - (1). In general.
 - (2). Actions.

III. PUBLIC AID.

- 34. Rights under grants of aid in general.
- 35. Acceptance and performance of conditions.
- 36. Agreements in consideration of grant of aid.
- 37. Indemnity or security by railroad company.
- 38. Right to stock on payment of subscription.
- 39. Effect of sale, lease, or consolidation of railroad.
- 40. Negotiation and sale of securities.
- 41. Liability of railroad company for interest on securities.
- 42. Payment or redemption of securities by railroad company.
- 43. Reports and accounts.

IV. LOCATION.**(A) LOCATION OF ROAD.**

- 44. In general.
- 45. Discretion of company.

320. RAILROADS**IV. LOCATION.(Cont'd)**

- 46. Contracts as to location of road.
- 47. Determination as to location.
- 48. Parallel roads.
- 49. Branches and lateral roads.
- 50. Termini.
- 51. Connections with other roads.
- 52. Extensions.
- 53. Survey and record of location.
- 54. Change of location.
- 55. Conflicting locations.
- 56. Property in location.
- 57. Abandonment of location.

(B) LOCATION AND ESTABLISHMENT OF STATIONS.

- 58. In general.
- 59. Additional stations.
- 60. Removal or abandonment of stations.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.

- 61. Capacity to acquire and hold land.
- 62. Purposes for which land may be acquired.
- 63. Modes of acquiring land or rights therein.
- 64. Agreements as to right of way or use of land.
 - (1). In general.
 - (2). Remedies.
- 65. Licenses.
- 66. Implied grants.
- 67. Conveyances to or for railroad company.
 - (1). In general.
 - (2). Rights and remedies of parties.
- 68. Extent of way or of land acquired.
- 69. Title, estate, or interest acquired.
- 70. Priority of right.
- 71. Exceptions and reservations in grants.
- 72. Covenants and conditions in grants.
 - (1). In general.
 - (2). Mode of construction of road in general.
 - (3). Location of road, termini, and stations.
 - (4). Private crossings, fences, and cattle guards.
 - (5). Successors or grantees of parties to grant.
 - (6). Waiver of performance and excuses for nonperformance.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.(Cont'd)

- (7). Nature and effect of conditions.
- (8). Rights and remedies of parties.
- (8.1). — In general.
- (9). — Damages.
- 73. Use of lands or rights acquired.
 - (1). In general.
 - (2). Construction and effect of conveyance or license in general.
 - (3). Use by adjoining owners.
 - (4). Permitting use by third persons.
- 74. Rights in and use of highways and public places.
 - 74.1. — In general.
- 75. — Grant in general.
 - (1). In general.
 - (2). Legislative grant or authorization.
 - (3). Grant or consent by municipal authorities.
 - (4). Grant, consent, or remonstrance by abutting owners.
 - (5). Making, requisites, and validity of grant.
 - (6). Covenants and conditions in grant.
 - (7). Conflicting or exclusive grants and priority of right.
 - (8). Curative statutes.
- 76. — Nature and extent of right.
- 77. — Interference with use.
- 78. — Duration and termination of right.
- 79. — Remedies by and against companies.
- 80. Rights in and use of road or land of other railroad.
- 81. Conveyances or release by railroad company.
- 82. Abandonment and forfeiture of land or rights.
 - (1). In general.
 - (2). What constitutes abandonment.
 - (3). Breach of conditions of private grant.
 - (4). Revocation or forfeiture of grant of rights in highways and public places.
 - (5). Rights of parties or privies on abandonment.

320. RAILROADS**V. RIGHT OF WAY AND OTHER INTERESTS
IN LAND.(Cont'd)**

- (6). Remedies of parties or persons interested.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.**

- 83. Authority and duty of railroad company.
- 84. Deposit of security.
- 85. Time for commencement and completion of construction.
- 86. Plan and mode of construction in general.
- 87. Roadbed and tracks.
- 88. Crossing other railroads.
- 88.1. — In general.
- 89. — Right to cross.
- 90. — Place, mode, and expense of crossing.
- 91. — Determination as to necessity, place, mode, and expenses of crossing.
 - (.5). In general.
 - (1). Statutory provisions.
 - (1.5). Nature and form of remedy.
 - (2). Jurisdiction and powers of courts.
 - (3). Parties, pleading, and evidence.
 - (4). Powers and proceedings of railroad or corporation commissioners.
 - (5). Appointment, powers, and proceedings of special commissioners.
 - (6). Injunction.
 - (7). Award, judgment, or decree.
 - (8). Review.
- 92. Crossing highways.
- 92.1. — In general.
- 93. — Right to cross.
- 94. — Place, mode, and expense of crossing.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Character of highway.
 - (4). Crossing at grade or at different grades.
 - (5). Relocation or changing grade of highway.
 - (6). Remedies.
- 95. — Restoring and maintaining highway.
 - (1). In general.
 - (2). Statutory provisions.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Character of highway.
- (4). Companies and persons liable.
- (5). Mode and sufficiency of restoration or maintenance.
- (6). Bridges and approaches at crossings.
- (7). Agreements respecting restoration and maintenance.
- (8). Remedies of public.
- 96. — Highway laid out after construction of railroad.
- 97. — Determination as to necessity, place, mode, and expenses of crossing.
- 98. — Change after construction of railroad.
- 99. — Abolition and removal of grade crossings.
 - (1). In general.
 - (2). Place, mode, and expenses of new crossings.
 - (3). Agreements respecting abolition of grade crossings.
 - (4). Powers and proceedings of public officers or special commissioners.
 - (5). Powers and proceedings of railroad commissioners.
 - (6). Jurisdiction and proceedings of courts.
 - (6.1). — In general.
 - (7). — Supervisory jurisdiction.
 - (8). — Appointment and proceedings of commissioners or auditors.
 - (9). Assessment of damages.
 - (10). Remedies of taxpayers.
 - (11). Review.
 - (12). Operation and effect of abolition.
- 100. Crossing private lands.
- 100.1. — In general.
- 101. — Mode of construction.
- 102. — Private crossings.
 - (.5). In general.
 - (1). Duty to construct crossing in general.
 - (2). Statutory provisions.

320. RAILROADS**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Character and condition of land of abutting owner.
- (4). Persons entitled to crossings.
- (5). Number, location, and purposes of crossings.
- (6). Plan, mode, and sufficiency of crossing.
- (7). Removal or change in location or mode of construction.
- (8). Obstruction of track or crossing.
- (9). Agreement with or waiver by abutting owner.
- (10). Actions and proceedings for enforcement of rights; injunction.
- (11). Recovery from railroad company of compensation for construction.
- (12). Penalties.
- 103. Fences and cattle guards.
 - (.5). In general.
 - (1). Duty to erect and maintain in general.
 - (2). Application of stock and fence laws.
 - (3). Time for construction.
 - (4). At what places required.
 - (5). Nature and sufficiency.
 - (6). Enforcement of rights.
 - (7). — In general.
 - (8). — Penalties.
- 106. Waters and water courses.
Common law liability for drainage problems, see WATER LAW ¶1172.
- 106.1. — In general.
- 107. — Mode of construction in general.
- 108. — Ditches, culverts, and bridges.
- 109. Maintenance and repair.
- 111. Liabilities for work, labor, or materials.
- 112. Injuries from construction or maintenance.
 - 112.1. — In general.
- 113. — Nature and extent of liability.
 - (.5). In general.
 - (1). Effect of authorization by state or municipality.
 - (2). Construction and maintenance in general.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Construction and maintenance along or across highways.
- (4). Construction and maintenance of fences and cattle guards.
- (5). Construction and maintenance over and near water courses.
- (6). Companies and persons liable for injuries.
- (7). Persons entitled to sue or recover damages.
- (8). Release, waiver, or estoppel of owner of property injured.
- (10). Proximate cause of injury.
- (11). Contributory negligence of person damaged.
- (12). Nuisance.
- 114. — Actions.
 - (.5). In general.
 - (6). Nature and form of remedy; conditions precedent.
 - (.7). Jurisdiction and venue.
 - (1). Limitations, parties, and pleading.
See also LIMITATION OF ACTIONS.
 - (2). Evidence.
 - (3). Damages.
 - (4). Trial, judgment, and review.
 - (5). Injunction.
- 115. Motive power.
- 116. Rolling stock.
- 117. Completion, acceptance, and opening of road for traffic.
- VII. SALES, LEASES, TRAFFIC CONTRACTS,
AND CONSOLIDATION.**
- 118. Power to transfer franchises or property in general.
- 119. Constitutional and statutory provisions.
- 120. Powers of continuous or connecting lines.
- 121. Powers of parallel or competing lines.
- 122. Transfers to and contracts with foreign companies.
- 123. Consent of stockholders.
- 124. Consent of public authorities.
- 125. Sales.
 - 125.1. — In general.
- 126. — Power to buy or sell.
- 127. — Contracts for sale.

320. RAILROADS**VII. SALES, LEASES, TRAFFIC CONTRACTS,
AND CONSOLIDATION.(Cont'd)**

- 128. — Conveyances.
- 129. — Rights and liabilities of purchasers.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Covenants and conditions in grant of right of way.
 - (4). Injuries from construction and maintenance.
 - (5). Remedies by or against companies.
- 130. Leases.
- 130.1. — In general.
- 131. — Power to make or take lease.
- 132. — Requisites and validity.
- 133. — Construction and operation.
 - (1). In general.
 - (2). Nature and form of contract.
 - (3). Property, rights, and franchises included.
 - (4). Maintenance and repair and rent.
 - (5). Rescission or forfeiture.
- 134. — Rights and liabilities of lessors and lessees.
 - (1). In general.
 - (2). Liability on contracts.
 - (3). Liabilities arising from construction and maintenance.
 - (4). Taxes and assessments.
 - (5). Application of earnings and income and management and control of road.
 - (6). On subletting or assignment of lease.
 - (7). Effect of invalidity of lease.
 - (8). Actions by or against lessor and lessee.
- 135. Contracts for control, operation, or use of railroads or incidental facilities.
- 135.1. — In general.
- 136. — Power to make contracts.
- 137. — Requisites and validity.
- 138. — Construction and operation.
- 139. — Rights and liabilities of parties.
- 140. Consolidation.
- 140.1. — In general.
- 141. — Power to consolidate.
- 142. — Agreements and proceedings.
- 143. — Operation and effect.

**VII. SALES, LEASES, TRAFFIC CONTRACTS,
AND CONSOLIDATION.(Cont'd)**

- 144. — Rights and liabilities of parties.
 - (1). In general.
 - (2). Actions.

VIII. FINANCIAL MATTERS.**(A) NATURE AND EXTENT OF LIABILITIES.**

- 145. Power to incur indebtedness in general.
- 146. Liabilities on contracts in general.
- 147. Borrowing money.
- 148. Making and indorsement of negotiable instruments.
- 149. Making and issue of bonds.
- 149.1. — In general.
- 150. — Authority to issue.
- 151. — Form, requisites, and validity.
- 152. — Negotiation and sale.
- 153. — Rights of bondholders in general.
- 154. Guaranty and suretyship.
- 155. Statutory liens in general.
- 156. Liens for public aid granted.
- 157. Liens for right of way or land granted.
- 158. Liens for rolling stock furnished.
- 159. Liens for labor or supplies.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Application of general lien laws.
 - (4). Nature and purpose of labor, material, or expenditure and use thereof.
 - (5). Property or fund covered by lien.
 - (6). Amount and duration of lien.
 - (7). Location of road and place of contract.
 - (8). Contracts supporting lien.
 - (9). Persons entitled to lien.
 - (10). Notice of claim or lien.
 - (10.1). — In general.
 - (11). — Time for filing lien or giving notice.
 - (12). — Form and sufficiency of statement or claims.
- 160. Liens for loans or advances.
- 161. Liens for damages.
- 162. Mortgages and trust deeds.
- 162.1. — In general.
- 163. — Power to mortgage.
- 164. — Nature as security.

320. RAILROADS**VIII. FINANCIAL MATTERS.**(Cont'd)

- 165. — Form, requisites, and validity.
- 166. — Construction and operation in general.
- 167. — Property and funds included.
- 168. — Debts and obligations secured.
- 169. — Rights, duties, and liabilities of mortgagees and trustees.
- 170. Application of proceeds of obligations and securities.
- 171. Priorities of liens and mortgages.
 - (1). In general.
 - (2). Necessity and effect of registration.
 - (3). Priorities between mortgages and other claims in general.
 - (4). Liens for public aid granted.
 - (5). Liens for right of way or land granted.
 - (6). Liens for rolling stock furnished.
 - (7). Liens for labor, supplies, or advances.
 - (8). Liens for damages.
 - (9). Priorities between different mortgagees or bondholders.
 - (10). Persons entitled to priority and loss or waiver of right.
- 172. Interest and coupons.
- 173. Application of earnings, income, and sinking funds.
- 174. Payment and satisfaction.
- 175. Release or discharge.
- 176. Enforcement of liabilities against property.
- 177. — In general.
- 178. — Claims against specific property.
- 179. Actions on obligations.

(B) FORECLOSURE OF LIENS AND MORTGAGES.

- 180. Right to foreclose.
- 181. Foreclosure without action in general.
- 182. Foreclosure by exercise of power of sale.
- 183. Rights of action and defenses.
- 184. Jurisdiction and venue.
- 185. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 186. Parties.
- 187. Process and appearance.
- 188. Pleading.
- 189. Evidence.

VIII. FINANCIAL MATTERS.(Cont'd)

- 190. Trial or hearing, and reference.
- 191. Judgment or decree and execution.
- 192. Sale.
- 193. Rights and liabilities of purchasers.
- 194. — In general.
 - 194.1. — Succession to franchises and powers of original company in general.
 - 194.2. — Grantees or successors of purchasers.
 - 194.3. — Injuries incident to construction and maintenance.
 - 194.4. — Contracts and agreements of predecessor in general.
 - 194.5. — Right of way and other interests in land.
 - 194.6. — Leases and traffic contracts.
 - 194.7. — Indebtedness, securities, liens and mortgages.
 - 194.8. — Possession and operation of road.
 - 194.9. — Actions or proceedings by or against purchasers.
 - 194.10. — Vacation or invalidity of sale.
- 195. — Purchasing bondholders or other creditors.
 - (1). In general.
 - (2). Rights, powers, liabilities, and proceedings of committees.
 - (3). Rights of bondholders, stockholders, and creditors.
- 196. Reorganization by purchasers.
- 197. Disposition of proceeds and surplus.
- 198. Review of proceedings.
- 199. Fees and costs.
- 200. Operation and effect.
- 201. Redemption.
- 202. Actions to set aside foreclosure.

IX. RECEIVERS.

- 203. Application of remedy to railroads.
- 204. Constitutional and statutory provisions.
- 205. Grounds of appointment.
- 206. Appointment, qualification, and tenure.
- 207. Powers and duties of receiver as affected by public interest in maintenance and operation of road.

320. RAILROADS**IX. RECEIVERS.(Cont'd)**

- 208. Powers and duties of receiver as affected by leases and traffic contracts before appointment.
- 209. Duties of receiver as to bondholders, mortgagees, and other creditors.
- 210. Authority to control and manage road, and exercise thereof in general.
- 211. Effect of appointment on status of railroad company.
- 212. Rights and liabilities of railroad company after discharge of receiver.
- 213. Foreign and ancillary receiverships.

X. OPERATION.**(A) DUTY TO OPERATE.**

- 214. Nature and extent of duty in general.
- 215. Branches and lateral and connecting roads.
- 216. Private branches, spurs, and side tracks.
- 217. Accommodations and facilities at stations.
- 218. Train service and accommodations.
- 219. Proceedings to compel operation.
- 220. Proceedings to compel furnishing of accommodations or facilities.
- 221. Injuries from failure to operate road.
- 222. Injuries to property from operation of road.
 - (1). In general.
 - (2). Nuisances in general.
 - (3). Occupation and obstruction of highways.
 - (4). Right of action.
 - (5). Actions.

(B) STATUTORY, MUNICIPAL, AND OFFICIAL REGULATIONS.

- 223. Authority, construction, and operation in general.
- 224. Companies and persons to whom applicable.
- 225. Facilities for shipment of goods.
- 226. Accommodations for passengers.
- 227. Train service.
- 229. Equipment of trains.
 - (.5). In general.
 - (1). Validity, construction, and purpose of statutory requirements.

X. OPERATION.(Cont'd)

- (2). Companies or railroads subject to requirements.
 - (3). Violations of requirements.
 - (3.1). — In general.
 - (4). — Defective or insufficient brakes.
 - (5). — Defective or insufficient coupling devices.
 - (6). — Defective or insufficient grabirons or handholds and ladders.
 - (7). — Excusable violations.
 - (8). — Repairs and movements of cars for purpose of repairs.
230. Employees.
Excludes hours of labor, see LABOR AND EMPLOYMENT XIII(D).
- 231. Movement of trains in general.
 - 232. Notices.
 - 233. Signals and lookouts.
 - 234. Rate of speed.
 - 235. — In general.
 - 236. — In cities, towns, and villages.
 - 237. Roadbed, bridges, tunnels, and tracks.
 - 238. Lighting track.
 - 239. Crossing railroads.
 - 240. — In general.
 - 241. — Street railroads.
 - 242. Crossing highways and public places.
 - 242.1. — In general.
 - 243. — Signboards, signals, flagmen, and gates at crossings.
 - 244. — Lights, signals, and lookouts from trains.
 - 245. — Rate of speed.
 - 246. Obstructing highways.
 - 247. Crossing private roads.
 - 249. Fire.
 - 250. Reports and notices of accidents.
 - 251. Presumptions and burden of proof as to negligence.
 - 252. Contributory negligence as ground of defense.
 - 253. Damages for violations of regulations.
 - 254. Penalties for violations of regulations.
 - (.5). In general.
 - (1). Power to impose.
 - (2). Liability for penalty in general.
 - (3). Persons entitled to recover.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (4). Successive violations.
- (5). Effect of operation of railroad by receiver.
- (6). Actions for penalties.
- 255. Offenses in operation of railroads.
 - (1). In general.
 - (2). Accommodations for passengers.
 - (3). Operation of trains in general.
 - (4). Obstructing highways with trains or cars.
 - (5). Wrecking or obstructing trains.
 - (6). Shooting or throwing missiles at or into trains.
 - (7). Effect of operation of road by receiver.
 - (8). Indictment, information, or complaint.
 - (8.1). — In general.
 - (9). — Wrecking or obstructing trains or cars.
 - (10). — Issues, proof, and variance.
 - (11). Evidence.
 - (12). Trial and review.
 - (13). Punishment.

**(C) COMPANIES AND PERSONS
LIABLE FOR INJURIES.**

- 256. Ownership, possession, and control of road in general.
- 257. Contractors for construction.
- 258. Vendors and purchasers.
- 259. Lessors and lessees.
 - (.5). In general.
 - (1). Effect of lease in general.
 - (2). Necessity and effect of legislative authority.
 - (3). Form and validity of lease and assumption of liability by lessee.
 - (4). Operation by lessee in name or for interest of lessor.
 - (5). Special charter of lessee.
 - (6). Liabilities imposed by statute in general.
 - (7). Defects in roadbed.
 - (8). Injuries to shippers of goods and employees.
 - (9). Injuries to animals.
 - (10). Fires.

X. OPERATION.(Cont'd)

- 260. Companies permitting use of road by others.
- 261. Companies operating or using roads of others.
- 262. Connecting roads.
- 263. Consolidated roads.
- 264. Mortgagees and trustees in possession.
- 265. Effect of operation of road by receiver.
- 266. Joint liabilities.
- 267. Officers, agents, and employees.
- 268. Pleading ownership and operation.
- 269. Evidence as to ownership and operation.
 - 269.1. — In general.
- 270. — Presumptions and burden of proof.
- 271. — Admissibility.
- 272. — Sufficiency.
- 273. Trial.

**(D) INJURIES TO LICENSEES OR
TRESPASSERS IN GENERAL.**

- 273.5. In general.
- 274. Injuries to persons at stations.
 - (1). In general; care required and liability.
 - (2). Persons entitled to protection.
 - (3). Defects in stations and approaches thereto.
 - (4). Articles projecting, falling, or thrown from trains.
 - (5). Operation of trains.
- 275. Injuries to persons working on or about cars.
 - (1). In general; care required and liability.
 - (2). Persons entitled to protection.
 - (3). Signals, warnings, and lookouts.
 - (4). Defects in cars.
 - (5). Statutes applying rule of liability of master for injuries to servant.
- 276. Injuries to persons on trains.
 - (1). In general; care required and liability as to trespassers.
 - (2). Care required and liability as to licensees.
 - (3). Care required and liability as to children.
 - (4). Persons riding at invitation or by acquiescence of employees.

320. RAILROADS**X. OPERATION.**(Cont'd)

- (5). Application of rule of liability of master for injuries to servant.
- 277. Removal of trespassers.
- 277.5. Turntables and other attractive nuisances.
- 278. Contributory negligence.
 - (.5). In general.
 - (1). Persons at stations.
 - (2). Persons working on or about cars.
 - (3). Persons on trains or cars.
 - (3.1). — In general.
 - (4). — Children.
 - (5). Trespassers removed from trains.
 - (6). Injury avoidable notwithstanding contributory negligence.
- 279. Proximate cause of injury.
- 280. Willful or wanton injury.
- 281. Acts or omissions of employees or others.
 - (1). In general.
 - (2). Inviting or permitting persons to ride on trains or cars.
 - (3). Removal of trespassers from trains or cars.
 - (3.1). — In general.
 - (4). — Children.
 - (5). Removal of trespassers from depots and other property.
 - (6). Acts of third persons.
- 282. Actions for injuries to licensees or trespassers.
 - (.5). In general.
 - (6). Conditions precedent.
 - (1). Pleading.
 - (1.1). — In general.
 - (2). — Issues, proof, and variance.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Damages.
 - (7). Questions for jury.
 - (7.1). — In general.
 - (8). — Injuries to persons at stations.
 - (9). — Injuries to persons working on or about cars.

X. OPERATION.(Cont'd)

- (10). — Injuries to persons on trains.
- (11). — Removal of trespassers.
- (12). Instructions.
- (12.1). — In general.
- (13). — Injuries to persons at stations.
- (14). — Injuries to persons working on or about cars.
- (15). — Injuries to persons on trains and removal of trespassers.
- (16). Verdict and findings.

(E) ACCIDENTS TO TRAINS.

- 283. Care in management of trains in general.
- 284. Defects in engines or cars.
- 285. Rate of speed.
- 286. Collisions.
- 287. — In general.
- 288. — At railroad crossings.
- 289. Defects in roadbeds or tracks.
- 290. Obstructions on tracks in general.
- 291. Animals on tracks.
- 292. Incompetency, negligence, or misconduct of employees.
- 293. Wrongful acts of third persons.
- 294. Injuries caused.
- 295. Contributory negligence.
- 296. Proximate cause of injury.
- 297. Actions for injuries.
 - (.5). In general.
 - (1). Pleading.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Sufficiency of evidence.
 - (5). Damages.
 - (6). Questions for jury.
 - (6.1). — In general.
 - (7). — Contributory negligence.
 - (8). Instructions.
 - (8.5). Verdict and findings.
 - (9). Appeal and error.

(F) ACCIDENTS AT CROSSINGS.

- 298. Public or private character of crossings.
- 298.1. — In general.

320. RAILROADS**X. OPERATION.**(Cont'd)

- 299. — Highways and other public places.
- 300. — Crossings by license or custom.
- 301. Mutual rights and duties at public crossings.
- 302. Mutual rights and duties at places not public crossings.
- 303. Defects in crossings and approaches.
 - (1). In general; duty and liability.
 - (2). Character of highway.
 - (3). Nature of defect.
 - (4). Bridges.
 - (5). Changing location of highway.
 - (6). Private crossings.
 - (7). Knowledge by railroad company of defect or danger.
- 304. Obstructions at crossings.
- 305. Frightening animals.
 - (1). In general.
 - (2). By signals and escape of steam.
 - (3). By obstructions on or near crossing.
- 306. Signboards, signals, flagmen, and gates at crossings.
- 307. — In general.
 - 307.1. — Customary methods.
 - 307.2. — Signboards.
 - 307.3. — Signals and warnings.
 - 307.4. — Gates, lights, and flagmen.
 - (1). In general.
 - (2). Persons entitled to protection.
 - (3). Improper management; withdrawal after establishment.
- 307.5. — Duty irrespective of statute, ordinance, or official regulation.
- 308. — Violations of statutes or ordinances.
- 309. Care in running trains in general.
- 310. Mode of running at crossings.
- 311. Lights, signals, and lookouts from trains or cars.
- 312. — In general.
 - (1). In general.
- 312.1. — Lights.
- 312.2. — Signals.
- 312.3. — Lookouts.
- 312.4. — Customary methods.
- 312.5. — At what crossing required.
 - (1). In general.

X. OPERATION.(Cont'd)

- (2). Private crossings and crossings by license or custom.
- 312.6. — Persons entitled to benefit of signals.
 - (1). In general.
 - (2). Drivers of teams.
- 312.7. — To what trains or cars applicable in general.
- 312.8. — Backing trains over crossings.
- 312.9. — Running unattended cars over crossing.
- 312.10. — Duty when view or hearing obstructed.
- 312.11. — Excuses for failure to give signals.
- 312.12. — Effect of compliance with statutes or ordinances.
- 312.13. — Duty irrespective of statute or ordinance.
- 313. — Violations of statutes or ordinances.
- 314. Obstruction of view or hearing.
- 315. Rate of speed.
- 316. — In general.
 - (1). In general.
 - (2). Nature and locality of crossing.
 - (3). Where view or hearing is obstructed.
 - (4). Duty irrespective of statutes or ordinances.
- 317. — Violations of statutes or ordinances.
- 318. Means of controlling trains.
- 319. Precautions as to persons seen at or near crossing.
- 320. — In general.
- 321. — Children.
- 322. — Infirm or helpless persons.
- 323. Contributory negligence.
 - 323.1. — In general.
- 324. — Care in going on or near tracks in general.
 - (1). In general.
 - (2). Construction and effect of statutory provisions.
 - (3). Wrongful or unlawful acts or conduct.
 - (4). Care of horses or teams in general.

320. RAILROADS**X. OPERATION.(Cont'd)**

325. — Care required of children and others under disability.
- (1). In general.
 - (2). Deaf or blind persons.
 - (3). Intoxicated persons.
 - (4). Use of defective or obstructed crossing.
 - (5). Duty to stop, look, and listen.
 - (6). Crossing near approaching trains or cars.
326. — Use of defective or obstructed crossings.
- (1). In general.
 - (2). Passing over, between, or under standing trains or cars.
 - (3). Crossing while gates are closed or being closed.
 - (4). Knowledge of danger.
 - (5). Effect of violation of statute or ordinance by railroad company.
327. — Duty to stop, look, and listen.
- (1). In general.
 - (2). Opportunity to see or hear train.
 - (3). Duty of pedestrians to stop, look, and listen.
 - (4). Duty to both look and listen.
 - (5). Duty to look in both directions.
 - (6). Time and mode of running of trains.
 - (7). Duty to stop before reaching crossing.
 - (8). Time and place for looking and listening.
 - (9). After passing of train.
 - (10). Attention attracted by other trains.
 - (11). Speed of person injured in approaching crossing.
 - (12). Occupant of vehicle driven by another.
 - (13). Character of crossing.
328. — Duty where view or hearing obstructed.
- (1). In general.
 - (2). Duty to stop before reaching crossing.
 - (3). Duty of driver of vehicle to go ahead to look and listen.

X. OPERATION.(Cont'd)

- (4). Time and place for looking and listening.
 - (5). Speed of person injured in approaching crossing.
 - (6). Crossing behind passing trains.
 - (7). Noises preventing hearing of train.
 - (8). Darkness or stormy weather.
 - (9). Smoke, steam, and dust.
 - (10). Standing cars.
 - (11). Covering head, muffling ears, or riding in covered vehicle.
 - (12). Obstructions made or permitted by railroad company.
329. — Knowledge of danger.
330. — Reliance on precautions on part of railroad company.
- (1). In general.
 - (2). Signboards, signals, flagmen, and gates at crossings.
 - (3). Lights and signals from trains or cars.
 - (4). Rate of speed of trains.
331. — Effect of directions of railroad employees.
- (1). In general.
 - (2). Employees in charge of trains obstructing crossings.
 - (3). Employees in charge of signals and gates at crossings.
 - (4). Disregarding warnings and signals.
332. — Crossing near standing trains or cars.
333. — Crossing near approaching trains or cars.
- (1). In general.
 - (2). Distance of train and imminence of danger.
 - (3). Intervening incidents causing delay in crossing track.
334. — Acts in emergencies.
335. — Effect in general.
- (1). In general.
 - (2). Failure to maintain signboards, flagmen, and gates at crossing.
 - (3). Failure to give signals from trains.
 - (4). Unlawful or excessive speed of trains.
 - (5). Contributory negligence as proximate cause of injury.

320. RAILROADS**X. OPERATION.**(Cont'd)

- 335.5. — Imputed contributory negligence.
- 337. Proximate cause of injury.
 - (1). In general.
 - (2). Defects or obstructions at crossings.
 - (3). Fright or unmanageableness of horses.
 - (4). Management of gates.
 - (5). Failure to give signals from trains.
 - (6). Unlawful rate of speed.
- 338. Injury avoidable notwithstanding contributory negligence.
- 338.1. — In general; situation of peril.
- 338.2. — Knowledge or appreciation of peril in general.
- 338.3. — Reliance on precautions on part of persons approaching crossing.
- 338.4. — Opportunity to avoid injury.
- 338.5. — Care required after discovery of peril.
- 338.6. — Continuing or concurrent negligence of person injured.
- 339. Willful or wanton acts and gross negligence.
 - (1). In general.
 - (2). Effect as to contributory negligence.
- 340. Acts or omissions of employees or others.
 - (.5). In general.
 - (1). Employees.
 - (2). Third persons.
- 341. Actions for injuries.
- 341.1. — In general.
- 342. — Conditions precedent.
- 343. — Jurisdiction and venue.
- 344. — Pleading.
 - (.5). In general.
 - (1). Form and sufficiency of allegations in general.
 - (2). Character and description of crossing.
 - (3). Defects and obstructions at crossings.
 - (4). Frightening animals.
 - (5). Management of locomotives, trains, or cars in general.
 - (6). Violation of statutes or ordinances.

X. OPERATION.(Cont'd)

- (7). Proximate cause of injury.
- (8). Negating contributory negligence.
- (9). Willful or wanton acts and gross negligence.
- (10). Pleading contributory negligence or other fault.
- 345. — Issues, proof, and variance.
 - (1). In general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance between allegations and proof.
- 346. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Construction and effect of statutory provisions.
 - (3). Existence of defect or happening of accident or injury.
 - (4). Violation of statutes or ordinances.
 - (5). Contributory negligence.
 - (5.1). — In general.
 - (6). — Duty to stop, look, and listen.
 - (7). Proximate cause of injury.
- 347. — Admissibility of evidence.
 - (1). In general.
 - (2). Customary methods and acts.
 - (3). Nature and circumstances of injury.
 - (4). Similar facts and transactions.
 - (6). Character and description of crossing.
 - (7). Defects or obstructions at crossing.
 - (8). Signboards, signals, lights, flagmen, and gates at crossings.
 - (9). Lights, signals, and lookouts from trains.
 - (10). Rate of speed.
 - (11). Contributory negligence.
- 348. — Sufficiency of evidence.
 - (1). In general.
 - (2). Place of accident and cause of injury.
 - (3). Signals, flagmen, and gates at crossings.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (4). Lights, signals, and lookouts from trains.
- (5). Rate of speed.
- (6). Contributory and comparative negligence; apportionment.
- (6.1). — In general.
- (7). — Children.
- (8). — Failure to stop, look, and listen.
- (9). — Duty where view or hearing obstructed.
- (10). — Reliance on precautions on part of railroad company.
- (11). Willful or wanton acts and gross negligence.
- 349. — Damages.
- 350. — Questions for jury.
 - (1). In general.
 - (2). Character of crossing.
 - (3). Defects and obstructions at crossings.
 - (4). Frightening animals.
 - (5). Signboards, signals, flagmen, and gates at crossings.
 - (6). Mode of running at crossings in general.
 - (7). Lights, signals, and lookouts from trains or cars.
 - (7.1). — In general.
 - (8). — Method of moving trains or cars.
 - (9). — Where view or hearing obstructed.
 - (10). — Duty irrespective of statute.
 - (11). Rate of speed.
 - (12). Precautions as to persons seen at or near crossing.
 - (13). Contributory negligence in general.
 - (14). Contributory negligence of children and others under disability.
 - (15). Use by person injured of defective or obstructed crossing.
 - (16). Duty of person injured to stop, look, and listen.
 - (16.1). — In general.
 - (17). — Opportunity to see or hear train.

X. OPERATION.(Cont'd)

- (18). — Duty to stop before reaching crossing.
- (19). — Time, place, and direction for looking and listening.
- (20). — Attention attracted by other train.
- (21). — Occupant of vehicle driven by another.
- (22). Duty of person injured where view or hearing is obstructed.
- (22.1). — In general.
- (23). — Duty to stop or to go ahead of vehicle to look and listen.
- (24). — Time and place for looking and listening.
- (25). — Crossing behind passing trains and attraction of attention from approaching train.
- (26). — Darkness, fog, smoke, and stormy weather.
- (27). — Standing cars.
- (28). Reliance on precautions on part of railroad company.
- (29). Effect as to contributory negligence of directions of railroad employees.
- (30). Crossing near standing or approaching trains or cars.
- (31). Acts in emergencies.
- (32). Proximate cause of injury.
- (33). Injury avoidable notwithstanding contributory negligence.
- (34). Willful, wanton, or gross negligence.
- 351. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Character of crossing and rights and duties of railroad company and public therein.
 - (5). Defects and obstructions at crossings.
 - (6). Frightening animals.
 - (7). Signals and flagmen at crossings.
 - (8). Care in running trains in general.

320. RAILROADS**X. OPERATION.**(Cont'd)

- (9). Lights, signals, and lookouts from trains or cars.
- (10). Rate of speed.
- (11). Precautions as to persons seen at or near crossing.
- (12). Contributory negligence.
- (12.1). — In general.
- (13). — As proximate cause of injury.
- (14). — Children and others under disability.
- (15). — Use of defective or obstructed crossing.
- (16). — Duty to stop, look, and listen in general.
- (17). — Duty where view or hearing obstructed.
- (18). — Reliance on precautions on part of railroad company.
- (19). — Effect of directions of railroad employees.
- (20). — Effect.
- (21). Proximate cause of injury.
- (22). Injury avoidable notwithstanding contributory negligence.
- (23). Willful, wanton, or gross negligence, and unauthorized acts of employees.
- (24). Damages.
- 352. — Verdict and findings.
- 353. — Appeal and error.

(G) INJURIES TO PERSONS ON OR NEAR TRACKS.

- 354. Right to go on or near track.
- 355. — In general.
 - (1). In general.
 - (2). Tracks on or crossing streets or highways.
 - (3). Violation of statutes.
 - (4). Places provided for crossing track.
 - (5). Persons working on or about tracks or transacting business with railroad company.
- 356. — Customary use of track.
 - (1). In general.
 - (2). Nature and form of acquiescence by railroad company.
 - (3). Duration and extent of user.

X. OPERATION.(Cont'd)

- (4). Sufficiency and effect of signboards and warnings.
- (5). Violation of statutes.
- (6). Persons working on or about track.
- (7). Approaches to stations.
- 357. Care required in general.
- 358. Care required as to licensees.
 - (1). In general.
 - (2). Children.
- 359. Care required as to trespassers.
 - (1). In general.
 - (2). Children.
- 360. Frightening animals near railroad.
 - (1). In general.
 - (2). By smoke, noise, or escape of steam.
 - (3). By signals from trains.
 - (4). Permitting cars to stand on or near highway.
- 361. Failure to fence railroad.
- 362. Defects in roadbed, tracks, or equipment.
 - (5). In general.
 - (1). Roadbed or tracks.
 - (2). Equipment.
- 363. Derailment of trains.
- 364. Articles projecting, falling, or thrown from trains.
- 365. Mode of running trains or cars.
- 366. Signals and lookouts.
- 367. — In general.
- 368. — Violations of statutes or ordinances.
- 369. — Persons entitled to benefit of signals and lookouts.
 - (1). In general.
 - (2). Provisions of statutes or ordinances in general.
 - (3). Licensees and trespassers in general.
 - (4). Children and others under disability.
- 370. — Places for giving signals or keeping lookout.
- 371. Rate of speed.
- 372. — In general.
 - (1). In general.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (2). Construction and effect of statutes or ordinances in general.
- (3). Duty irrespective of statute or ordinance.
- (4). Persons entitled to care as to speed.
- (5). Places at which speed should be reduced.
- 373. — Violations of statutes or ordinances.
- 374. Means of controlling trains.
- 375. Precautions as to persons seen on or near track.
- 376. — In general.
- 376.1. — Care required in general.
- 376.2. — Duty as to trespassers in general.
- 376.3. — Provisions of statutes.
- 376.4. — Duty to stop or slacken speed in general.
- 377. — Right to presume that person will leave track or avoid danger.
- 378. — Children.
- 379. — Infirm or helpless persons.
- 380. Contributory negligence.
- 380.1. — In general.
- 381. — Care required of persons on or near tracks in general.
 - (1). In general.
 - (2). Care required of licensees.
 - (3). Use of track in general.
 - (4). Customary use of track.
 - (5). Disregarding warnings and signals.
 - (6). Crossing trestles or bridges.
 - (7). Care of horses or teams.
 - (8). Passing over, under, or between standing trains or cars.
 - (9). Going on track near approaching trains or cars.
- 382. — Care required of children and others under disability.
 - (.5). In general.
 - (1). Children.
 - (1.1). — In general.
 - (2). — Going to sleep on track.
 - (3). — Failure to look or listen for approaching trains.
 - (4). — Acts in emergencies.
 - (5). — Crossing near approaching trains or cars.

X. OPERATION.(Cont'd)

- (6). Persons under physical disability.
- 383. — Failure to look or listen for approaching train.
 - (1). In general.
 - (2). As affected by right to go on track.
 - (3). Opportunity to see or hear train.
 - (4). Attention attracted by other trains or cars.
 - (5). Covering head or muffling ears.
- 384. — Knowledge of danger.
- 385. — Reliance on precautions on part of railroad company.
- 386. — Acts in emergencies.
- 387. — Effect in general.
- 389. Proximate cause of injury.
 - (1). In general.
 - (2). Defects in roadbed or equipment.
 - (3). Frightening animals.
 - (4). Signals and lookouts.
 - (5). Rate of speed.
- 390. Injury avoidable notwithstanding contributory negligence.
- 391. Willful or wanton acts and gross negligence.
 - (1). In general.
 - (2). Frightening animals near railroad.
 - (3). Rate of speed, and signals, lights, and lookouts.
 - (4). Precautions as to persons seen on or near track.
- 392. Acts or omissions of employees or others.
- 393. Actions for injuries.
- 393.1. — In general.
- 394. — Pleading.
 - (1). In general.
 - (2). Right to go on or near track.
 - (3). Frightening animals near railroad.
 - (4). Violations of statutes or ordinances.
 - (5). Negating contributory negligence.
 - (6). Injury avoidable notwithstanding contributory negligence and willful and wanton acts.
 - (7). Pleading contributory negligence or other fault.
- 395. — Issues, proof, and variance.

320. RAILROADS**X. OPERATION.**(Cont'd)

- 396. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of accident or injury.
- 397. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (4). Right to go on or near track.
 - (5). Customary use of track.
 - (6). Defects in roadbed, tracks, or equipment.
 - (7). Signals and lookouts.
 - (8). Violation of statutes or ordinances.
 - (9). Precautions as to persons seen on or near track.
 - (10). Contributory negligence.
- 398. — Sufficiency of evidence.
 - (1). In general.
 - (2). Signals, lights, and lookouts.
 - (3). Precautions as to persons seen on or near track.
 - (4). Contributory negligence.
 - (5). Willful, wanton, or unauthorized acts of employees.
- 399. — Damages.
- 400. — Questions for jury.
 - (.5). In general.
 - (1). Nature and circumstances of injury in general.
 - (2). Customary use of track and care required as to licensees and trespassers.
 - (3). Frightening animals.
 - (4). Failure to fence railroad and defects in roadbed, tracks, or cars.
 - (5). Derailment of trains and articles projecting, falling, or thrown therefrom.
 - (6). Signals and lookouts.
 - (7). Rate of speed and means of controlling trains.
 - (8). Precautions as to persons seen on or near track.
 - (8.1). — In general.
 - (9). — Children and others under disability.
 - (10). Contributory negligence.
 - (10.1). — In general.

X. OPERATION.(Cont'd)

- (11). — Children and others under disability.
- (12). — Failure to look and listen for approaching train.
- (13). — Acts in emergencies.
- (14). Injury avoidable notwithstanding contributory negligence.
- (15). Willful, wanton, or gross negligence.
- (16). Acts of employees of railroad company.
- 401. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Frightening animals near railroad.
 - (4). Defects in roadbed or equipment.
 - (5). Signals and lookouts.
 - (6). Rate of speed.
 - (7). Precautions as to persons seen on or near track.
 - (8). Contributory negligence.
 - (9). Injury avoidable notwithstanding contributory negligence, and willful or wanton acts.
- 402. — Verdict and findings.
- 403. — Judgment and execution.
- (H) INJURIES TO ANIMALS ON OR NEAR TRACKS.**
- 405. Care required and liability as to animals in general.
- 406. Effect of stock laws or fence laws in general.
- 407. Frightening animals near railroad.
- 408. Attracting animals to railroad.
- 409. Accidents at places open to public in general.
- 410. Accidents at or near public crossings.
- 411. Requirements as to fences and cattle guards in general.
 - (1). In general.
 - (2). Agreement of railroad company to erect and maintain fences.
 - (3). Effect of failure to erect fences and cattle guards in general.
 - (4). Effect of erection of fences as to liability and care required.
 - (5). Care required and liability where fencing is not required.

320. RAILROADS**X. OPERATION.**(Cont'd)

- (6). Trespassing animals and effect of stock laws.
- (6.5). Character or species of animals injured.
- (7). Time for construction of fences and excuses for failure to fence.
- (8). Waiver or agreement of adjoining landowner.
- (9). Effect of award of damages to adjoining owner for fencing.
- (10). Persons entitled to benefit of fences.
- (10.5). Nature and cause of injury.
- (11). Place of entry of animals on right of way.
- (12). At what places required.
- (12.1). — In general.
- (13). — Determination of necessity or location.
- (14). — Public or private convenience in general.
- (15). — In cities, towns, and villages.
- (16). — Stations, switchyards, and depot grounds.
- (17). — Improved or inclosed lands.
- (18). — Highways.
- 412. Defects in fences or cattle guards.
 - (1). In general; duty to maintain.
 - (2). Knowledge of defect and opportunity to repair.
 - (3). Cause of defect.
 - (4). Sufficiency of fences and cattle guards.
 - (5). Approval by public officers.
- 413. Private crossings, gates, and bars.
 - (.5). In general.
 - (1). Duty to construct and maintain crossings, gates, and cattle guards.
 - (2). Persons entitled to benefit of gates or bars.
 - (3). Knowledge of condition of crossing and opportunity to remedy defect.
 - (4). Duty to keep gates or bars closed.
 - (5). Defects created by third persons or abutting owner.

X. OPERATION.(Cont'd)

- (6). Liability for defects in crossings, gates, or bars.
- (7). Effect of waiver or agreement of abutting owner.
- 414. Injuries by running on roadbed, trestles, or bridges.
- 415. Signals and lookouts.
 - (.5). In general.
 - (1). Failure to give signals in general.
 - (1.5). Lights on locomotives or cars.
 - (2). Duty to keep lookout in general.
 - (3). At what places required.
 - (4). Place of injury.
 - (5). Duty where track is fenced and effect of stock laws.
- 416. Obstruction of view.
- 417. Rate of speed.
- 418. Means of controlling trains.
- 419. Care as to animals seen on or near track.
 - (1). In general.
 - (2). Species of animal on track.
 - (3). Animals as trespassers and care required where track is fenced.
 - (4). Duty to stop or slacken speed in general.
 - (5). Animals standing or walking at side of or approaching track.
 - (6). Where collision is inevitable.
 - (7). Stock alarms.
- 420. Contributory negligence.
- 421. — In general.
- 422. — Railroad fences, gates, and bars.
- 423. — Escape of animals from inclosure or control.
- 424. — Allowing animals to go at large.
- 425. Proximate cause of injury.
- 426. Injury avoidable notwithstanding contributory negligence.
- 427. Willful, wanton, or unauthorized acts, and gross negligence.
- 428. Species of animal injured.
- 429. Persons entitled to damages.
- 430. Notice of claim.
- 431. Appraisement of damages.
- 432. Summary proceedings for damages.
- 433. Actions for injuries to animals.
 - 433.1. — In general.

320. RAILROADS**X. OPERATION.**(Cont'd)

- 434. — Rights of action and defenses.
- 435. — Jurisdiction and venue.
- 436. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 437. — Parties.
- 438. — Process and appearance.
- 439. — Pleading.
 - (1). In general.
 - (2). Time and place of injury.
 - (3). Fences and cattle guards.
 - (4). Injuries from moving trains in general.
 - (5). Signals and lookouts and precautions as to animals seen on or near track.
 - (6). Acts or omissions of employees.
 - (7). Notice of claim.
 - (8). Answer and reply.
 - (9). Amendment.
- 440. — Issues, proof, and variance.
- 441. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Fact of killing or injuring.
 - (2.1). — In general.
 - (3). — As affected by locality of accident or custody of animals.
 - (4). — Finding dead or injured animal near track.
 - (5). — Evidence rebutting presumption.
 - (6). Fences and cattle guards.
 - (7). Private crossings, gates, and bars.
 - (8). Signals and lookouts, rate of speed, and precautions as to animals seen on track.
 - (9). Contributory negligence.
- 442. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (3). Condition of fences and cattle guards.
 - (5). Failure to erect fences or cattle guards.
 - (6). Care in running trains.
 - (7). Contributory negligence.
 - (8). Proceedings for appraisalment of damages.
- 443. — Sufficiency of evidence.
 - (1). In general.

X. OPERATION.(Cont'd)

- (2). Cause of injury in general.
- (3). Nature and extent of injury or damage.
- (4). Time and place of injury.
- (5). Failure to erect fences and cattle guards.
- (6). Defects in fences, cattle guards, gates, or bars.
- (7). Signals and lookouts and precautions as to animals seen on or near track.
- (8). Contributory negligence.
- (9). Willful, wanton, or gross negligence.
- 444. — Damages.
- 445. — Conduct of trial in general.
- 446. — Questions for jury.
 - (1). In general.
 - (2). Cause of injury in general.
 - (3). Fact of killing or injuring animals.
 - (4). Accidents at crossings.
 - (5). Fences and cattle guards.
 - (5.1). — In general.
 - (6). — Cause of injury and place of entry on right of way.
 - (7). — At what places required.
 - (8). — Defects in fences and cattle guards.
 - (9). — Private crossings, gates, and bars.
 - (10). Signals and lookouts and precautions as to animals seen on or near track.
 - (11). Rate of speed.
 - (12). Contributory negligence.
 - (13). Proximate cause of injury.
 - (14). Willful or wanton injuries.
- 447. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Fences and cattle guards in general.
 - (5). Defects in crossings, fences, and cattle guards.
 - (6). Private crossings, gates, and bars.

320. RAILROADS**X. OPERATION.**(Cont'd)

- (7). Signals and lookouts and precautions as to animals seen on or near track.
- (8). Contributory negligence.
- 448. — Verdict and findings.
- 449. — Judgment.
- 450. — Execution and enforcement of judgment.
- 452. — Costs.

(I) FIRES.

- 453. Care required and liability as to fires in general.
- 454. Defects in construction of engines.
 - (1). In general.
 - (2). Customary methods and newest, safest, and best appliances.
 - (3). Effect of adoption or use of ordinary appliances or precautions.
- 455. Management of engines.
- 456. Combustibles on railroad property.
- 457. Preventing spread of fire.
- 458. Contributory negligence.
- 459. — In general.
 - (1). In general.
 - (2). Erection of buildings or placing property near railroad.
- 460. — Combustibles near railroad.
- 461. — Precautions against communication of fire.
- 462. — Extinguishment of fire.
- 463. Proximate cause of injury.
- 464. — In general.
- 465. — Spread of fire.
- 466. Injury avoidable notwithstanding contributory negligence.
- 467. Property injured or destroyed.
- 468. Effect of statutes giving railroad company insurable interest.
- 469. Contracts for exemption from liability.
- 470. Persons entitled to damages.
- 471. Actions for injuries by fire.
- 471.1. — In general.
- 472. — Nature and form of remedy.
- 473. — Rights of action and defenses.
- 474. — Jurisdiction and venue.
- 475. — Time to sue and limitations.
- See also LIMITATION OF ACTIONS.*
- 476. — Parties.

X. OPERATION.(Cont'd)

- 477. — Process and appearance.
- 478. — Pleading.
 - (1). In general.
 - (2). Acts of agents or employees.
 - (3). Defects in and management of engines.
 - (4). Combustibles on railroad property.
 - (5). Preventing spread of fire.
 - (6). Proximate cause of injury.
 - (7). Answer.
- 479. — Issues, proof, and variance.
- 480. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of injury.
 - (2.1). — In general.
 - (3). — Rebutting presumption.
 - (4). Cause of injury.
 - (5). Defects in and management of engines.
 - (6). Contributory negligence.
- 481. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (2.1). — In general.
 - (3). — Where particular engine causing injury is not known or identified.
 - (4). — As showing defects in or mismanagement of engines.
 - (5). — As showing probable cause and possibility of prevention of injury.
 - (6). Precautions against recurrence of injury.
 - (7). Competency of employees.
 - (8). Defects in and management of engines.
- 482. — Sufficiency of evidence.
 - (1). In general.
 - (2). Origin or cause of fire in general.
 - (3). Setting out and preventing spread of fire.
 - (4). Defects in and management of engines.
 - (5). Combustibles on railroad property.
- 483. — Damages.

320. RAILROADS**X. OPERATION.**(Cont'd)

484. — Questions for jury.
- (1). In general.
 - (2). Happening of injury and rebutting presumption of negligence.
 - (3). Origin of fire.
 - (4). Defects in and management of engines.
 - (5). Combustibles on railroad property.
 - (6). Contributory negligence.
485. — Instructions.
- (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Origin of fire.
 - (5). Setting out and preventing spread of fire.
 - (6). Defects in and management of engines.
 - (7). Combustibles on railroad property.
 - (8). Contributory negligence.
 - (9). Proximate cause of injury.
486. — Verdict and findings.
487. — Judgment.

322. REAL ACTIONS**SUBJECTS INCLUDED**

Actions for recovery of specific real property, founded on right of property therein, without or with incidental recovery of damages for detention or profits, etc., thereof

More particularly, writs of right, writs of formedon, statutory petitory actions, etc.

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein

Incidental recovery for use and occupation, profits, damages, improvements, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages for wrongful entry upon or injury to real property, actions for, see TRESPASS

Equitable remedy to quiet title, see QUIETING TITLE

Possession—

Mere right of, actions founded on, see ENTRY, WRIT OF, FORCIBLE ENTRY AND DETAINER

Recovery of possession merely and damages for detention thereof, see EJECTMENT, TRESPASS TO TRY TITLE

Writ of possession, see ASSISTANCE, WRIT OF

1. Writ of right.
 - 1.1. — In general.
2. — Right of action and defenses.
3. — Proceedings.
4. Writ of formedon.
5. Statutory remedies in general.
6. Petitory actions.
 - 6.1. — In general.
7. — Right of action and defenses.
 - (.5). In general.
 - (1). Nature and scope of remedy.
 - (2). Title and right to maintain.
 - (3). Defenses.
8. — Proceedings.
 - (1). In general.
 - (2). Pleading and evidence.
 - (3). Judgment and review.
 - (4). Damages.
 - (5). Improvements.

322H. REAL PROPERTY CONVEYANCES**SUBJECTS INCLUDED**

Instruments in writing under seal, particularly deeds conveying real property

Nature, requisites, validity, incidents, construction, operation, and effect of such instruments

322H. REAL PROPERTY CONVEYANCES

Evidence relating thereto	Government, grants of land by, see PUBLIC LANDS, MINES AND MINERALS
Delivery, acceptance, and recording or registration thereof	Judgments, orders, and decrees, sales under, see JUDICIAL SALES, EXECUTORS AND ADMINISTRATORS, PARTITION, and other specific topics
Estates or interests created, exceptions or reservations therefrom, and conditions or restrictions imposed thereon	Judicial process, sales under, see CREDITORS' REMEDIES and other specific topics
Contracts for transfer of ownership of real property for a price in money or its equivalent, executory or executed	Lost deeds, establishment of, see LOST INSTRUMENTS
Rights and liabilities of parties to such contracts in general	Mortgages, enforcement by sale, see MORTGAGES AND DEEDS OF TRUST
Remedies relating thereto	Particular classes of persons, deeds and sales by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, MENTAL HEALTH, PARTNERSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS, and other specific topics
Exchange or barter of real property, transfers by way of	Particular personal relations, deeds and sales between persons in, see MARRIAGE AND COHABITATION, EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, and other specific topics
SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS	Particular species of property, deeds and sales of, see PUBLIC LANDS, MINES AND MINERALS, WATER LAW, PARTY WALLS, HOMESTEAD, and other specific topics
Acknowledgment of deeds, necessity and sufficiency, see ACKNOWLEDGMENT	Personal property, sale of, see SALES
Assignees for benefit of creditors, receivers, and the like, sales by, see CREDITORS' REMEDIES \Rightarrow 1172, RECEIVERS	Powers, deeds and sales in execution of, see POWERS
Cancellation and surrender of deeds or contracts, see CANCELLATION OF INSTRUMENTS	Records of deeds, in general and as constructive notice to purchasers, mortgagees, and the like, see RECORDS, MORTGAGES AND DEEDS OF TRUST
Compelling execution and delivery of deed, see SPECIFIC PERFORMANCE	Reformation of deeds and contracts, see REFORMATION OF INSTRUMENTS
Compelling performance of contracts, see SPECIFIC PERFORMANCE	Registers of deeds, see REGISTERS OF DEEDS
Court orders, judgments, or decrees, deeds of land sold under, see JUDICIAL SALES and other specific topics	Seals, sufficiency in general, see SEALS
Covenants in deeds, validity, construction, and effect, see COVENANTS	Security, deeds as, see MORTGAGES AND DEEDS OF TRUST
Estates created by deeds, and rights of owners thereof, see PROPERTY and other specific topics	Signatures, sufficiency in general, see SIGNATURES
Estoppel by deed, and operation of covenants to pass title by estoppel, including doctrine of after-acquired title, see ESTOPPEL	Statute of frauds, requirements of, see FRAUDS, STATUTE OF
Evidence, admissibility and effect of deeds, declarations of parties thereto, and parol or extrinsic evidence to explain, see EVIDENCE	Subrogation to lien or other rights of vendor, see SUBROGATION
Exchange or barter of personal property, transfers by way of, see PROPERTY	Tax deeds and sales, see TAXATION
Execution, deeds of lands sold under, see CREDITORS' REMEDIES	Trusts, deeds in execution of, see TRUSTS
Fraud as to creditors or subsequent purchasers, see FRAUDULENT CONVEYANCES	

322H. REAL PROPERTY CONVEYANCES

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- II. NATURE AND ESSENTIALS, ¶11-210.
 - (A) IN GENERAL, ¶11-40.
 - (B) FORM AND CONTENTS IN GENERAL, ¶41-60.
 - (C) DESIGNATION AND DESCRIPTION OF PROPERTY, ¶61-80.
 - (D) EXECUTION, ¶81-101.
 - (E) DELIVERY, ¶102-130.
 - (F) ACCEPTANCE, ¶131-140.
 - (G) CONSIDERATION, ¶141-160.
 - (H) VALIDITY, ¶161-200.
 - (I) AMENDMENT OR CORRECTION BY SUBSEQUENT INSTRUMENT, ¶201-210.
- III. RECORDING AND REGISTRATION, ¶211-220.
- IV. CONSTRUCTION AND OPERATION, ¶221-340.
 - (A) IN GENERAL, ¶221-270.
 - (B) PROPERTY CONVEYED, ¶271-290.
 - (C) ESTATES AND INTERESTS CREATED, ¶291-340.
 - 1. IN GENERAL, ¶291-300.
 - 2. CREATION OF PARTICULAR ESTATES AND INTERESTS, ¶301-340.
- V. EXCEPTIONS AND RESERVATIONS, ¶341-360.
- VI. CONDITIONS AND RESTRICTIONS, ¶361-390.
- VII. LOSS OR RELINQUISHMENT OF RIGHTS, ¶391-420.
 - (A) IN GENERAL, ¶391-410.
 - (B) LOSS OF RIGHTS AS TO CONDITIONS AND RESTRICTIONS, ¶411-420.
- VIII. CONTRACTS FOR SALE OR TRANSFER OF REAL PROPERTY, ¶421-730.
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 - (B) REQUISITES AND FORMATION OF CONTRACT, ¶441-470.
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 - (D) CONSTRUCTION, OPERATION, AND PERFORMANCE OF CONTRACT, ¶501-720.
 - 1. IN GENERAL, ¶501-520.
 - 2. SUBJECT MATTER, ¶521-540.
 - 3. TITLE AND ESTATE OF VENDOR, ¶541-590.
 - 4. CONVEYANCE, ¶591-610.
 - 5. PURCHASE MONEY, ¶611-640.
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- VIII. CONTRACTS FOR SALE OR TRANSFER OF REAL PROPERTY—Cont'd
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 - 3. RESCISSION BY PURCHASER, ¶961-990.
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 - 2. VENDOR'S LIEN IN GENERAL, ¶1001-1050.
 - 3. ENFORCEMENT OF VENDOR'S LIEN, ¶1051-1100.
 - (H) VENDOR'S RECOVERY OF LAND, ¶1101-1120.
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322H. REAL PROPERTY CONVEYANCES**X. RIGHTS AND LIABILITIES OF VENDOR AND PURCHASER AS TO THIRD PERSONS—Cont'd**

(A) IN GENERAL, ⚡1121–1150.

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XI. OPTIONS AND PREEMPTIVE RIGHTS, ⚡1241–1270.**XII. EXCHANGES OF REAL PROPERTY, ⚡1271–1284.****I. IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions in general.
3. What law governs.
4. Relation between state and federal law; preemption.

II. NATURE AND ESSENTIALS.**(A) IN GENERAL.**

11. In general.
12. Deeds in general.
13. Particular modes of conveyance.
14. — In general.
15. — Common-law forms.
16. — Bargain and sale.
17. — Lease and release.
18. — Covenant to stand seized.
19. — Quitclaim.
20. Conveyances distinguished from other transactions.
21. — In general.
22. — Wills and trusts.
23. — Mortgages and deeds of trust.
24. — Executory contracts.
25. Property which may be subject of conveyance.
26. Title or interest of grantor.
27. Time of taking effect.
28. Parties.
29. — In general.
30. — Capacity to convey.
31. — Capacity to take.

(B) FORM AND CONTENTS IN GENERAL.

41. In general.
42. Necessity of writing.
43. Designation and description of parties.
44. — In general.

II. NATURE AND ESSENTIALS.(Cont'd)

45. — Requisites and sufficiency.
46. — Fictitious persons.
47. — Blanks.
48. Recitals.
49. — In general.
50. — Consideration and receipt thereof.
51. Operative words of conveyance.

(C) DESIGNATION AND DESCRIPTION OF PROPERTY.

61. In general.
62. Purpose.
63. Requisites and sufficiency.
64. — In general.
65. — Certainty, definiteness, and specificity in general.
66. — Particular designations and descriptions.
 - (1). In general.
 - (2). Designation by official survey.
 - (3). Designation by metes and bounds.
 - (4). Conveyance of part of tract by quantity.
 - (5). Excepting undesignated part of tract.
 - (6). Designation by source of title.
 - (7). Designation as grantor's residence.
 - (8). Designation as adjoining other property.
67. Blanks.
68. Reference to maps or plats.
69. Reference to other instruments or records.
70. False description.

(D) EXECUTION.

81. In general.
82. Requisites and sufficiency.
83. — In general.
84. — Signature or subscription.
85. — Seal.
86. — Witnesses and attestation.
87. — Affixing revenue stamps.
88. Partial or defective execution.
89. Execution in blank.
90. Curing defects.
91. — In general.

322H. REAL PROPERTY CONVEYANCES**II. NATURE AND ESSENTIALS.(Cont'd)**

- 92. — Confirmation or ratification of defective instrument.
- 93. — Curative statutes.
- 94. Forgery.

(E) DELIVERY.

- 102. In general.
- 103. Necessity.
- 104. Requisites and sufficiency.
- 105. — In general.
- 106. — Intent of parties.
 - (1). In general.
 - (2). Intent of grantor.
- 107. — Necessity of parting with control over instrument.
- 108. — Retention of instrument by grantor.
- 109. — Obtaining possession by fraud or without consent of grantor.
- 110. — Delivery during grantor's lifetime.
- 111. — Return to grantor.
- 112. Co-grantors and co-grantees.
- 113. Delivery to third person.
- 114. — In general.
- 115. — Delivery to agent, attorney, or relative of grantee.
- 116. — Leaving with conveyancer or officer taking acknowledgment.
- 117. — Necessity of grantor parting with control over instrument.
- 118. Record or delivery for record.
- 119. — In general.
- 120. — Intention.
- 121. — Knowledge or assent of grantee.
- 122. — Retention of instrument by grantor after record.
- 123. Conditional delivery.
- 124. Deposit for delivery on death of grantor.
- 125. Curing defects.
- 126. — In general.
- 127. — Ratification of unauthorized or defective delivery.
- 128. Operation and effect.

(F) ACCEPTANCE.

- 131. In general.
- 132. Necessity.

II. NATURE AND ESSENTIALS.(Cont'd)

- 133. Requisites and sufficiency.
- 134. Operation and effect.

(G) CONSIDERATION.

- 141. In general.
- 142. Necessity.
- 143. Effect of seal.
- 144. Sufficiency.
- 145. — In general.
- 146. — Adequacy of consideration.
- 147. — Natural affection and personal relations.
- 148. — Support and maintenance.
- 149. — Past consideration.
- 150. Want of consideration.
- 151. Failure of consideration.

(H) VALIDITY.

- 161. In general.
- 162. Assent of parties in general.
- 163. Capacity of parties.
- 164. — In general.
- 165. — Physical or mental condition in general.
- 166. — Age, dementia, and memory loss.
- 167. — Intoxication.
- 168. — Incapacity coupled with inadequacy of consideration.
- 169. Mistake.
- 170. — In general.
- 171. — Ignorance in general; duty to read.
- 172. — Language fluency; literacy.
- 173. — Mistake of law.
- 174. — Mutual mistake.
- 175. Fraud and misrepresentation.
- 176. — In general.
- 177. — Materiality and reliance in general.
- 178. — Particular cases and contexts in general.
- 179. — Omissions.
- 180. — Inadequacy of consideration.
- 181. — Special, confidential, or personal relations.
 - (1). In general.
 - (2). Fiduciary relations.
 - (3). Family relations.
- 182. — Age or infirm condition.
- 183. Duress.

322H. REAL PROPERTY CONVEYANCES**II. NATURE AND ESSENTIALS.(Cont'd)**

- 184. Undue influence.
- 185. — In general.
- 186. — Particular cases and contexts in general.
- 187. — Special, confidential, or personal relations.
 - (1). In general.
 - (2). Fiduciary relations in general.
 - (3). Family relations in general.
 - (4). Conveyance to spouse.
 - (5). Conveyance to parent.
 - (6). Conveyance to child.
- 188. — Age or infirm condition.
- 189. Legality.
- 190. Estoppel or waiver as to defects or objections.
- 191. Effect of invalidity.
- 192. — In general.
- 193. — Void or voidable conveyance.
- 194. Ratification of voidable conveyance.

(I) AMENDMENT OR CORRECTION BY SUBSEQUENT INSTRUMENT.

- 201. In general.
- 202. Time of taking effect; relation back.

III. RECORDING AND REGISTRATION.

- 211. In general.
- 212. Necessity and effect as between parties to instrument.
- 213. — In general.
- 214. — Effect of unrecorded instruments.
- 215. Instruments subject.
- 216. Place.
- 217. Time.
- 218. Sufficiency.

IV. CONSTRUCTION AND OPERATION.**(A) IN GENERAL.**

- 221. In general.
- 222. Intent of parties.
- 223. Language of instrument.
- 224. — In general.
- 225. — Language and intent.
- 226. — Plain language; plain, ordinary, or common meaning.
- 227. Ambiguity.
- 228. — In general.

IV. CONSTRUCTION AND OPERATION.(Cont'd)

- 229. — Patent or latent ambiguity.
- 230. — Absence of ambiguity; application of clear or unambiguous language.
- 231. Entire instrument; construction as a whole.
- 232. — In general.
- 233. — Four corners.
- 234. — Giving effect to every part; construing together.
- 235. — Repugnant or conflicting parts; harmonization.
- 236. — General and specific language.
- 237. — Earlier and later clauses.
- 238. — Written and printed parts.
- 239. Particular parts or elements of instrument.
- 240. — In general.
- 241. — Title or caption.
- 242. — Recitals.
- 243. — Matters annexed or referred to as part of instrument.
- 244. Construction as to parties.
- 245. — In general.
- 246. — Grantors.
- 247. — Grantees.
- 248. — Representative or official capacity.
- 249. Construction favoring grantee or disfavoring grantor.
- 250. — In general.
- 251. — Ambiguity.
- 252. Extrinsic facts and circumstances.
- 253. Construing multiple instruments together.
- 254. Merger of other agreements.
- 255. — In general.
- 256. — Preliminary agreements, negotiations, and understandings.
- 257. — Circumstances preventing merger.
- 258. Existing law.
- 259. Construction by parties.
- 260. Time of taking effect.

(B) PROPERTY CONVEYED.

- 271. In general.
- 272. Particular words or terms.
- 273. Particular descriptions.
- 274. — In general.
- 275. — Recital as to locality.

322H. REAL PROPERTY CONVEYANCES**IV. CONSTRUCTION AND
OPERATION.(Cont'd)**

- 276. — Additional recitals extending or limiting grant.
- 277. — Quantity of interest conveyed.
- 278. — Specific quantity described as part of larger tract.
- 279. Erroneous description.
- 280. References to other instruments or records.
- 281. — In general.
- 282. — Reference to surveys, maps, and plats.
- 283. After-acquired property or title.
- 284. Appurtenances.
- 285. Buildings and curtilage.
- 286. Strip and gore doctrine.

(C) ESTATES AND INTERESTS CREATED.**1. IN GENERAL.**

- 291. In general.
- 292. Conveyance as limited by grantor's interest.
- 293. Conveyance in representative or official capacity.
- 294. Warranty deeds.
- 295. Quitclaim deeds.
- 296. Granting, habendum, and tenendum clauses.
- 297. Particular words or terms.

**2. CREATION OF PARTICULAR ESTATES
AND INTERESTS.**

- 301. In general.
- 302. Fee simple.
- 303. — In general.
- 304. — Necessity and sufficiency of words of inheritance or perpetuity.
- 305. — Absence of words of inheritance.
- 306. — Limitations inconsistent with grant of fee in general.
- 307. — Limitation to heirs of grantee's body.
- 308. Qualified, defeasible, or conditional estates and interests.
- 309. — In general.
- 310. — Conditional limitations in general.
- 311. — Fee estates and interests in general.
- 312. — Reverter.

**IV. CONSTRUCTION AND
OPERATION.(Cont'd)**

- 313. — Fee simple determinable.
- 314. — Executory interests and limitations.
- 315. Estates tail.
- 316. — In general.
- 317. — Conversion into fee simple or other estate under statutory provisions.
- 318. Life estates.
- 319. — In general.
- 320. — Absence of words of inheritance.
- 321. — Limitations to heirs of grantee's body.
- 322. — Grant to one for life, remainder to children, heirs of the body, heirs, or issue.
- 323. Application of rule in Shelley's Case.
- 324. Reversions.
- 325. Remainders.
- 326. — In general.
- 327. — Vested or contingent remainders in general.
- 328. — Contingency on which estate depends.
- 329. — Opening of vested remainder to let in after-born remaindermen.
- 330. — Devesting of vested estates.
- 331. — Extinguishment of estate.
- 332. Joint tenancy or tenancy in common.

V. EXCEPTIONS AND RESERVATIONS.

- 341. In general.
- 342. Exceptions and reservations distinguished.
- 343. Creation and validity.
- 344. — In general.
- 345. — Certainty, definiteness, and specificity.
- 346. — Particular exceptions and reservations.
- 347. Construction and operation.
- 348. — In general.
- 349. — Construction favoring grantee or disfavoring grantor.
- 350. — Particular exceptions and reservations.
- 351. Exceptions and reservations in favor of stranger or third party.

322H. REAL PROPERTY CONVEYANCES**VI. CONDITIONS AND RESTRICTIONS.**

- 361. In general.
- 362. Covenants distinguished from conditions and restrictions.
- 363. Creation and validity in general.
- 364. — In general.
- 365. — Effect of invalidity.
- 366. Construction and operation in general.
- 367. Particular conditions and restrictions.
- 368. — In general.
- 369. — Conditions precedent in general.
- 370. — Conditions subsequent in general.
- 371. — Reverter.
- 372. — Support of grantor.
- 373. — Restraint or derogation of marriage.
- 374. — Restraint of alienation.
- 375. — Use of property.
- 376. — Conditions running with the land.
- 377. — Buildings or other structures or improvements.
 - (1). In general.
 - (2). Dwelling.
 - (3). Distance from street.
- 378. — Nuisances and particular occupations.
- 379. Persons entitled to benefit.
- 380. Persons bound or entitled to perform.
- 381. Performance or breach.
- 382. — In general.
- 383. — Time for performance.
- 384. — Sufficiency of performance.
- 385. — Excuses for nonperformance.
- 386. — Discharge by impossibility of performance.
- 387. — Effect of breach.

VII. LOSS OR RELINQUISHMENT OF RIGHTS.**(A) IN GENERAL.**

- 391. In general.
- 392. Acts of grantor.
- 393. — In general.
- 394. — Revocation.
- 395. — Subsequent conveyance.
- 396. Acts of grantee.
- 397. — In general.
- 398. — Redelivery of instrument to grantor.
- 399. — Indorsement on instrument.

VII. LOSS OR RELINQUISHMENT OF RIGHTS.(Cont'd)

- 400. Agreement of parties.
- 401. Destruction, mutilation, or alteration of instrument.
- 402. Loss of instrument.
- 403. Reconveyance.

(B) LOSS OF RIGHTS AS TO CONDITIONS AND RESTRICTIONS.

- 411. In general.
- 412. Release or waiver of forfeiture for breach.

VIII. CONTRACTS FOR SALE OR TRANSFER OF REAL PROPERTY.**(A) IN GENERAL.**

- 421. In general.
- 422. Sale distinguished from other transactions.
- 423. — In general.
- 424. — Lease or license.
- 425. — Power of sale or agency.
- 426. — Option or executory contract.
- 427. Real property which may be subject of sale.
- 428. — In general.
- 429. — Nature of property.
- 430. — Estate or interest of vendor in general.
- 431. — Particular estates and interests.
- 432. — After-acquired property.
- 433. Parties.
- 434. — In general.
- 435. — Capacity and right to sell and convey.
- 436. — Participation in and relation to transaction.

(B) REQUISITES AND FORMATION OF CONTRACT.

- 441. In general.
- 442. Offer to sell, and acceptance thereof.
- 443. — In general.
- 444. — Qualified or conditional offer.
- 445. — Time for acceptance.
- 446. — Qualified or conditional acceptance.
- 447. Offer to purchase, and acceptance thereof.
- 448. Consideration.

322H. REAL PROPERTY CONVEYANCES**VIII. CONTRACTS FOR SALE OR TRANSFER
OF REAL PROPERTY.(Cont'd)**

- 449. — In general.
- 450. — For sale.
- 451. — For purchase.
- 452. — Want or failure of consideration.
- 453. Oral contracts.
- 454. Written contracts.
- 455. — In general.
- 456. — Form and contents.
- 457. — Description of property.
- 458. — Execution.
- 459. — Acknowledgment.
- 460. — Delivery.
- 461. — Recording and registration.
- 462. Bonds for title or to convey.
- 463. Contracts by correspondence.
- 464. Implied agreements.

**(C) VALIDITY AND ENFORCEABILITY
OF CONTRACT.**

- 471. In general.
- 472. Assent of parties in general.
- 473. Capacity of parties.
- 474. Mistake.
- 475. — In general.
- 476. — Ignorance in general; duty to read.
- 477. — Language fluency; literacy.
- 478. — Mistake of law.
- 479. — Mutual mistake.
- 480. Misrepresentation and fraud by vendor.
- 481. — In general.
- 482. — Quantity, boundaries, and location.
- 483. — Title, estate, or interest.
- 484. — Quality or value.
 - (1). In general.
 - (2). Quality or condition.
- 485. — Application of doctrine of caveat emptor.
 - (1). In general.
 - (2). Misrepresentation as to quantity, boundaries, or location.
 - (3). Misrepresentation as to title.
 - (4). Misrepresentation as to condition, quality, or value.
 - (5). Knowledge or intent of vendor.
 - (6). Materiality of misrepresentation.
 - (7). Silence or concealment.
- 486. Misrepresentation and fraud by purchaser.

**VIII. CONTRACTS FOR SALE OR TRANSFER
OF REAL PROPERTY.(Cont'd)**

- 487. Duress.
- 488. Undue influence.
- 489. Legality.
- 490. Estoppel or waiver as to defects or objections.
- 491. Effect of invalidity.
- 492. — In general.
- 493. — Void or voidable contract.
- 494. Ratification of voidable contract.
- 495. — In general.
- 496. — Taking and holding possession.

**(D) CONSTRUCTION, OPERATION, AND
PERFORMANCE OF CONTRACT.****1. IN GENERAL.**

- 501. In general.
- 502. General rules of construction.
- 503. — In general.
- 504. — Language, intent, and ambiguity in general.
- 505. — Plain language; plain, ordinary, or common meaning.
- 506. — Entire contract; construction as a whole.
- 507. — Written and printed parts.
- 508. — Construction as to parties.
- 509. — Construction against drafter.
- 510. — Extrinsic facts and circumstances.
- 511. — Construing multiple instruments together.
- 512. — Existing law.
- 513. — Construction by parties.
- 514. Particular contracts and provisions.
- 515. — In general.
- 516. — Stipulations.
- 517. Place and time of making contract.
- 518. Entire or severable contracts.

2. SUBJECT MATTER.

- 521. In general.
- 522. Description of property in general.
- 523. Description of estate or interest.
- 524. Particular descriptions.
- 525. References to maps, plats, other instruments, or records.
- 526. Quantity or extent of land.
- 527. — In general.

322H. REAL PROPERTY CONVEYANCES**VIII. CONTRACTS FOR SALE OR TRANSFER
OF REAL PROPERTY.(Cont'd)**

- 528. — Sale by the acre or in gross.
- 529. Conformity to description in contract in general.
- 530. Specific quantity or measurement.
- 531. After-acquired property.
- 532. Appurtenances.
- 533. Surveys.
- 534. Exceptions and reservations.
- 535. Effect of excess.
- 536. Effect of deficiency.
- 537. Waiver of objections.
- 538. Curing or supplying deficiency or other variance from contract.

3. TITLE AND ESTATE OF VENDOR.

- 541. In general.
- 542. Sufficiency of title in general.
- 543. — In general.
- 544. — Defects in foreclosure proceedings.
- 545. — Title by descent or devise or sale in course of administration.
- 546. — Pendency of action and filing of lis pendens.
- 547. — Defects in prior conveyance.
- 548. Marketable title.
- 549. — In general.
- 550. — Necessity.
- 551. — Requisites and sufficiency in general.
- 552. — Defects in foreclosure proceedings.
- 553. — Title by descent or devise or sale in course of administration.
- 554. — Pendency of litigation.
- 555. — Defects in prior conveyance.
- 556. — Title by adverse possession.
- 557. — Incumbrances and charges.
- 558. — Easements and encroachments.
- 559. Sufficiency of title by adverse possession.
- 560. Sufficiency of record title.
- 561. Particular requirements as to title.
- 562. Incumbrances, liens or charges.
- 563. — In general.
- 564. — Mortgages.
- 565. — Dower.
- 566. — Building or other restrictions.
- 567. Easements and encroachments.
- 568. — In general.

**VIII. CONTRACTS FOR SALE OR TRANSFER
OF REAL PROPERTY.(Cont'd)**

- 569. — Encroachments on adjoining property or on street.
- 570. — Party wall.
- 571. Satisfaction of purchaser.
- 572. Approval of counsel or other person.
- 573. Knowledge by purchaser of defects.
- 574. Abstract of title.
- 575. Objections to title.
- 576. Effect of insufficiency.
- 577. Waiver of defects and objections.
- 578. Curing defects and perfecting title.
- 579. — In general.
- 580. — Time for curing defects.
- 581. — Security against defects.

4. CONVEYANCE.

- 591. In general.
- 592. Duty to prepare instrument.
- 593. Demand.
- 594. Tender.
- 595. Sufficiency.
- 596. — In general.
- 597. — Nature and form of instrument.
- 598. — Parties.
- 599. — Conformity to provisions of contract in general.
- 600. — Covenants.
- 601. — Conditions and restrictions.
- 602. Approval and acceptance.
- 603. Production and delivery of vendor's title deeds.
- 604. Delivery of possession of property.
- 605. Effect of conveyance on contract.
- 606. Effect of default or delay.

5. PURCHASE MONEY.

- 611. In general.
- 612. Amount in general.
- 613. Sale at price for tract or lot.
- 614. Sale at price per acre or foot.
- 615. Payment in general.
- 616. Demand.
- 617. Tender.
- 618. Interest and expenses.
- 619. Abatement or deductions.
- 620. — In general.
- 621. — Defect in title.

322H. REAL PROPERTY CONVEYANCES**VIII. CONTRACTS FOR SALE OR TRANSFER OF REAL PROPERTY.**(Cont'd)

- 622. — Deficiency in quantity of land.
- 623. — Waiver of right.
- 624. Mode and sufficiency of payment.
- 625. — In general.
- 626. — Notes or other obligations, and payment thereof.
- 627. — Assumption and payment of incumbrances or other liabilities.
- 628. Installments and deferred payments.
- 629. Liabilities of joint purchasers, and contribution.
- 630. Place of performance and payment.
- 631. Effect of payment.
- 632. Effect of default or delay.
- 633. Excuses for default or delay.
- 634. Waiver of default or delay.

6. TIME OF PERFORMANCE AND PAYMENT.

- 641. In general.
- 642. Concurrent acts.
- 643. Term of credit, and deferred payments.
- 644. Time as of the essence of the contract.

7. CONDITIONS AND PROVISOS.

- 651. In general.
- 652. Performance and breach in general.
- 653. Particular conditions and provisos.
- 654. — In general.
- 655. — Appraisals and inspections.
- 656. — Permits and approvals.
- 657. — Attorney review or approval.
- 658. — Financing; mortgage contingency clauses.
- 659. — Backup contracts.
- 660. Waiver of condition or proviso.

8. EXECUTED AND EXECUTORY CONTRACTS.

- 671. In general.
- 672. Effect on title to property.
- 673. — In general.
- 674. — Equitable title.
- 675. Particular cases and contracts.
- 676. — In general.
- 677. — Land sale contracts.
- 678. — Contracts for deed.
- 679. — Installment contracts.
- 680. — Conditional sales.

9. RIGHTS AND LIABILITIES OF PARTIES.

- 691. In general.
- 692. Good faith and fair dealing in general.
- 693. Estoppel of purchaser to deny title of vendor.
- 694. Acquisition or assertion of adverse title or claim.
- 695. Possession or control of property.
- 696. Enjoyment and use of property in general.
- 697. Trees and timber.
- 698. Crops and emblements.
- 699. Rents and profits.
- 700. Incumbrances.
- 701. Taxes and assessments.
- 702. Insurance.
- 703. Repairs.
- 704. Improvements.
- 705. Expenses and losses.
- 706. Injuries to property.
- 707. Dealings and transactions between parties.
- 708. Rights and liabilities of joint vendors as to each other.
- 709. Rights and liabilities of joint purchasers as to each other.
- 710. Assignment or other transfer of contract by purchaser.
- 711. Conveyance of property or transfer of interest by vendor.
- 712. Reconveyance by purchaser to vendor.

(E) MODIFICATION OF CONTRACT.

- 721. In general.
- 722. Modification by subsequent agreement.
- 723. Merger in subsequent contract.
- 724. Abandonment of rights.
- 725. Operation and effect.

IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.**(A) IN GENERAL.**

- 731. In general.
- 732. Enforcement of conveyances and deeds in general.
- 733. — In general.
- 734. — Enforcement of conditions and restrictions; forfeiture.
- 735. — Equitable relief from forfeiture.

322H. REAL PROPERTY CONVEYANCES**IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 736. Enforcement by vendors.
- 737. — In general.
- 738. — Nature and form of action.
- 739. — Right of action; elements.
- 740. — Conditions precedent.
- 741. Enforcement by purchasers.
- 742. — In general.
- 743. — Nature and form of action.
- 744. — Right of action; elements.
 - (1). In general.
 - (2). Deficiency in quantity of land.
 - (3). Defect in title of vendor.
 - (4). Failure or refusal to convey.
- 745. — Conditions precedent.
- 746. Contesting validity of conveyance.

(B) DEFENSES.

- 751. In general.
- 752. Defenses to actions by vendors.
- 753. — In general.
- 754. — Invalidity of contract.
- 755. — Breach of covenant or condition in general.
- 756. — Defect in title of vendor.
 - (1). In general.
 - (2). Character of defect in general.
 - (3). Incumbrances.
 - (4). Partial failure of title.
 - (5). Conditions precedent to raising defense.
 - (6). Right of purchaser under deed without covenants to raise defense.
 - (7). Right of purchaser under warranty deed to raise defense.
 - (8). Right of purchaser in possession to raise objection.
 - (9). Right to raise defense as dependent on solvency of vendor.
 - (10). Right to defense after selling property.
 - (11). Prior transfer by vendor.
- 757. — Defect in quantity or quality of land.
- 758. — Set-off and counterclaim.
- 759. Defenses to actions by purchasers.

(C) TIME TO SUE, LIMITATIONS, AND LACHES.

- 761. In general.
- 762. Actions by vendors.
- 763. Actions by purchasers.

(D) COURSE AND CONDUCT OF PROCEEDINGS.**1. IN GENERAL.**

- 771. In general.
- 772. Jurisdiction and venue.
- 773. Persons liable and parties.

2. PLEADING.

- 781. In general.
- 782. Conveyances and deeds in general.
- 783. — In general.
- 784. — Execution, delivery, and existence.
- 785. — Consideration.
- 786. — Invalidity.
- 787. — Conditions and restrictions.
- 788. — Variance between pleading and proof.
- 789. Actions by vendors.
- 790. — In general.
- 791. — Petition, complaint, or bill.
- 792. — Plea or answer, affidavit of defense, and subsequent pleadings.
- 793. — Issues, proof, and variance.
- 794. Actions by purchasers.

3. PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.

- 801. In general.
- 802. Conveyances and deeds in general.
- 803. — In general.
- 804. — Execution, existence, and identity.
- 805. — Delivery.
 - (1). In general.
 - (2). Presumption from possession of deed.
 - (3). Time of delivery.
 - (4). Acceptance.
 - (5). Effect of record or delivery for record.
- 806. — Consideration.
- 807. — Validity.
 - (1). In general.
 - (2). Capacity and assent of parties in general.
 - (3). Mistake.

322H. REAL PROPERTY CONVEYANCES**IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- (4). Fraud in general.
- (5). Undue influence.
- (6). Duress.
- 808. — Construction and operation.
- 809. — Performance or breach of condition.
- 810. Contracts for sale or transfer of real property.
- 811. — In general.
- 812. — Actions by vendors.
- 813. — Actions by purchasers.

4. ADMISSIBILITY OF EVIDENCE.

- 821. In general.
- 822. Conveyances and deeds in general.
- 823. — In general.
- 824. — Execution, existence, and identity.
- 825. — Delivery.
- 826. — Record or registration.
- 827. — Consideration.
- 828. — Validity.
- 829. — Construction and operation.
- 830. — Performance or breach of condition.
- 831. Contracts for sale or transfer of real property.
- 832. — In general.
- 833. — Actions by vendors.
- 834. — Actions by purchasers.

5. WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 841. In general.
- 842. Conveyances and deeds in general.
- 843. — In general.
- 844. — Execution, existence, and identity.
- 845. — Delivery.
 - (1). In general.
 - (2). Evidence in connection with possession of grantor.
 - (3). Evidence in connection with possession of grantee.
 - (4). Evidence in connection with recording.
 - (5). Evidence in connection with possession by third person.
 - (6). Acceptance.
 - (7). Time of delivery or taking effect.
- 846. — Record or registration.

IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)

- 847. — Consideration.
- 848. — Validity.
 - (1). In general.
 - (2). Capacity and assent of parties in general.
 - (3). Mistake.
 - (4). Fraud and misrepresentation.
 - (5). Undue influence.
 - (6). Duress.
- 849. — Construction and operation.
- 850. — Performance or breach of condition.
- 851. Contracts for sale or transfer of real property.
- 852. — In general.
- 853. — Actions by vendors.
- 854. — Actions by purchasers.

6. TRIAL OR HEARING AND DETERMINATION.

- 861. In general.
- 862. Questions of law or fact.
- 863. — In general.
- 864. — Conveyances and deeds in general.
 - (1). In general.
 - (2). Execution.
 - (3). Delivery.
 - (4). Validity.
 - (5). Construction and operation.
 - (6). Property conveyed.
- 865. — Contracts for sale or transfer of real property.
 - (1). In general.
 - (2). Actions by vendors.
 - (3). Actions by purchasers.
- 866. Instructions.
- 867. — In general.
- 868. — Actions by vendors.
- 869. — Actions by purchasers.
- 870. Judgment.

(E) MONETARY RELIEF.**1. IN GENERAL.**

- 881. In general.

2. AWARD TO VENDOR.

- 891. In general.

322H. REAL PROPERTY CONVEYANCES**IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

892. Recovery of payments owed by purchaser.
 893. Damages.

3. AWARD TO PURCHASER.

901. In general.
 902. Recovery of payments made to vendor.
 903. — In general.
 904. — Grounds for recovery.
 (1). In general.
 (2). Misrepresentation and fraud of vendor.
 (3). Rescission by agreement.
 (4). Rescission by vendor.
 (5). Defect in title of vendor.
 (6). Failure or refusal to convey.
 (7). Overpayment.
 905. — Effect of delay or default in performance by purchaser.
 906. — Waiver of right.
 907. — Amount and items of recovery.
 908. Damages.
 909. — In general.
 910. — Value of land in general.
 911. — Value of land at time of breach.
 912. — Value of land at time of breach and interest.
 913. — Value of land less unpaid purchase money.
 914. — Damages for deficiency or partial failure of title.
 915. — Improvements.
 916. — Damages for loss of bargain.
 917. — Nominal damages.
 918. — Interest on damages.

(F) RESCISSION OF CONTRACT.**1. IN GENERAL.**

921. In general.
 922. Option to rescind.
 923. — In general.
 924. — Forefiture provisions.
 925. Agreement to rescind.

2. RESCISSION BY VENDOR.

931. In general.
 932. Right to rescind.

IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)

933. — In general.
 934. — Invalidity of contract.
 935. — Failure of consideration.
 936. — Breach of covenant or condition in general.
 937. — Nonpayment of purchase money.
 938. — Insolvency of purchaser.
 939. Estoppel or waiver.
 940. — In general.
 941. — Waiver of default in payment.
 942. — Waiver after declaring forfeiture.
 943. Conditions precedent.
 944. — In general.
 945. — Restoration of consideration.
 946. Defenses or objections.
 947. Time for rescission, and laches.
 948. Election to rescind, and notice.
 949. Acts constituting rescission.
 950. Partial rescission.
 951. Actions for rescission.
 952. Operation and effect.
 953. — In general.
 954. — Payment for improvements.
 955. — Liability for timber cut.
 956. — Liability for rents and profits.

3. RESCISSION BY PURCHASER.

961. In general.
 962. Right to rescind.
 963. — In general.
 964. — Invalidity of contract.
 965. — Failure of consideration.
 966. — Breach of covenant or condition in general.
 967. — Failure to convey.
 968. — Defect in title of vendor.
 (1). In general.
 (2). Existence of mortgage.
 969. — Defect in quantity or quality of land.
 970. Estoppel or waiver.
 971. Conditions precedent.
 972. — In general.
 973. — Restoration of possession of land.
 974. Defenses or objections.
 975. Time for rescission, and laches.
 976. Election to rescind, and notice.

322H. REAL PROPERTY CONVEYANCES**IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 977. Acts constituting rescission.
- 978. Partial rescission.
- 979. Actions for rescission.
- 980. Operation and effect.
- 981. — In general.
- 982. — Rents and profits.
- 983. — Improvements and expenditures.

(G) LIENS.**1. IN GENERAL.**

- 991. In general.
- 992. Vendee's lien for purchase money and value of improvements and enforcement thereof.

2. VENDOR'S LIEN IN GENERAL.

- 1001. In general.
- 1002. Nature of lien in general.
- 1003. Claims which may be secured by lien.
- 1004. Property, estate or interest which may be subject to lien.
- 1005. Creation of lien in general.
- 1006. Title retained by vendor under provisions of contract.
- 1007. Lien reserved in contract or conveyance.
- 1008. Equitable lien.
- 1009. — In general.
- 1010. — Conveyance.
- 1011. — Contract of sale or bond for deed.
- 1012. — Price or consideration and mode or medium of payment.
- 1013. — Conveyance to third person at purchaser's request.
- 1014. Statutory liens.
- 1015. Proceedings to perfect lien.
- 1016. Operation and effect of lien in general.
- 1017. Amount and extent of lien.
- 1018. Property or interest subject to lien.
- 1019. Priority of lien.
- 1020. — In general.
- 1021. — As to liens acquired by legal proceedings.
- 1022. — Amount of lien as against junior lienholder.

IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)

- 1023. Assignment of lien or claim for purchase money.
- 1024. — In general.
- 1025. — Assignment of claim or obligation for purchase money as assignment of lien.
- 1026. — Rights and liabilities of parties in general.
- 1027. — Bona fide purchasers.
- 1028. — Priorities.
- 1029. — Assignment as transfer or extinguishment of vendor's title.
- 1030. Transfer of property by purchaser.
- 1031. — In general.
- 1032. — Liabilities of purchaser after transfer.
- 1033. — Rights and liabilities of subsequent purchasers.
 - (1). In general.
 - (2). Bona fide purchasers.
 - (3). Assumption of lien and personal liability.
 - (4). Rights as against assignee of purchase-money notes.
 - (5). Transfers of separate parcels to different persons.
- 1034. Waiver, loss, or discharge of lien.
- 1035. — In general.
- 1036. — Rescission or repudiation of sale.
- 1037. — Conveyance of property by grantor.
- 1038. — Death of purchaser.
- 1039. — Blending consideration with other demands.
- 1040. — Taking note or other obligation from purchaser and renewal thereof.
- 1041. — Action on obligation secured.
- 1042. — Taking other security and enforcement thereof.
- 1043. — As to subsequent purchasers.
- 1044. — Transfers of claim or obligation for purchase money.
- 1045. Payment, release, or satisfaction of lien.

3. ENFORCEMENT OF VENDOR'S LIEN.

- 1051. In general.
- 1052. Nature and form of remedy.
- 1053. Grounds for enforcement.

322H. REAL PROPERTY CONVEYANCES**IX. ENFORCEMENT, REMEDIES, AND PROCEEDINGS.(Cont'd)**

- 1054. Restraining enforcement.
- 1055. Conditions precedent.
- 1056. Defenses.
- 1057. — In general.
- 1058. — Defect in title of vendor.
- 1059. — Set-off and counterclaim.
- 1060. Persons entitled to enforce.
- 1061. Persons entitled to contest.
- 1062. Jurisdiction and venue.
- 1063. Time to sue, limitations, and laches.
- 1064. Parties.
- 1065. Pleading.
- 1066. — In general.
- 1067. — Bill, petition, or complaint.
- 1068. — Plea or answer and subsequent pleadings.
- 1069. — Variance between pleadings and proof.
- 1070. Evidence.
- 1071. — In general.
- 1072. — Presumptions, inferences, and burden of proof.
- 1073. — Admissibility.
- 1074. — Weight and sufficiency.
- 1075. Injunction.
- 1076. Receiver.
- 1077. Trial or hearing.
- 1078. Judgment or decree.
- 1079. — In general.
- 1080. — Rendition, form, and requisites.
- 1081. — Scope and extent of relief in general.
- 1082. — Sale of property and disposition of proceeds.
- 1083. — Amount of judgment.
- 1084. Execution and enforcement of judgment in general.
- 1085. Sale.
- 1086. Title and rights of purchaser at sale.
- 1087. Redemption from sale.
- 1088. Deficiency and personal liability.
- 1089. Proceeds and surplus.
- 1090. Review.
- 1091. Costs and fees.
- 1092. Operation and effect.

(H) VENDOR'S RECOVERY OF LAND.

- 1101. In general.
- 1102. Re-entry and possession of vendor.
- 1103. Summary remedies for recovery of possession.
- 1104. Actions for recovery of possession.
- 1105. — In general.
- 1106. — Conditions precedent.
- 1107. — Pleading and evidence.
- 1108. — Trial and judgment and enforcement thereof.
- 1109. Operation and effect of recovery of land.

X. RIGHTS AND LIABILITIES OF VENDOR AND PURCHASER AS TO THIRD PERSONS.**(A) IN GENERAL.**

- 1121. In general.
- 1122. Title as against third persons.
- 1123. Incumbrances and charges on property before contract.
- 1124. Subsequent purchasers from vendor.
- 1125. Creditors of vendor.
- 1126. — In general.
- 1127. — Attachment.
- 1128. — Execution.
- 1129. Assignees of contract or bond for title.
- 1130. — In general.
- 1131. — Right to assign contract or bond.
- 1132. — Mode and sufficiency of assignment.
- 1133. — Assignment for security.
- 1134. — Liabilities of vendor or assignor.
- 1135. — Liabilities of assignee.
- 1136. Purchasers from purchaser.
- 1137. Creditors of purchaser.
- 1138. Contracts relating to property.
- 1139. Trespass or other injuries to property by third persons.
- 1140. Actions between vendor or purchaser and third persons.

(B) BONA FIDE PURCHASERS.

- 1151. In general.
- 1152. Mode and form of conveyance.
- 1153. — In general.
- 1154. — Quitclaim.
- 1155. Notice in general.
- 1156. Time of notice.

322H. REAL PROPERTY CONVEYANCES**X. RIGHTS AND LIABILITIES OF VENDOR
AND PURCHASER AS TO THIRD
PERSONS.(Cont'd)**

- 1157. Actual notice.
- 1158. Effect of notice.
- 1159. — In general.
- 1160. — Prior contract of sale or conveyance by vendor in general.
- 1161. — Unrecorded or defectively recorded instrument in general.
- 1162. — Void or defective sale or conveyance.
- 1163. — Fraud and mistake.
- 1164. — Incumbrance or lien.
- 1165. Constructive notice, and facts putting on inquiry.
- 1166. — In general.
- 1167. — Unrecorded instrument.
- 1168. — Fraud and invalidity of instruments.
- 1169. — Existence of will and rights thereunder.
- 1170. — Lien or incumbrance and extent thereof.
- 1171. — Actions and other proceedings and judgments or decrees.
- 1172. — Streets and alleys.
- 1173. — Grants to railroads.
- 1174. — Knowledge or notice to others.
- 1175. — Capacity in which notice is received.
- 1176. Recitals in conveyance.
- 1177. — In general.
- 1178. — Unrecorded instruments.
- 1179. — Lien, charge, or incumbrance.
- 1180. — Relation of vendor to former owner.
- 1181. — Restrictions and conditions.
- 1182. Records.
- 1183. — In general.
- 1184. — Necessity and effect of searching records.
- 1185. — Facts of which record is notice.
- 1186. — Persons affected with notice and notice of instruments not in chain of title.
- 1187. — Record as notice of unrecorded instrument.
- 1188. — Defective records and requisites of records.

**X. RIGHTS AND LIABILITIES OF VENDOR
AND PURCHASER AS TO THIRD
PERSONS.(Cont'd)**

- 1189. — Filing as record.
- 1190. — Destruction or withdrawal of records.
- 1191. — Place of record.
- 1192. — Time of recording and relation back to delivery.
- 1193. — Priority between recorded instruments.
- 1194. — Index to record.
- 1195. — Instruments not entitled to record or required to be recorded in general.
- 1196. — Void and defective instruments.
 - (1). In general.
 - (2). Absence of or defect in acknowledgment or proof.
- 1197. — Particular instruments or proceedings.
 - (1). In general.
 - (2). Mortgages and other liens or incumbrances.
- 1198. Possession.
- 1199. — In general.
- 1200. — Requisites and sufficiency of possession.
- 1201. — Notice of possession.
- 1202. — Extent of possession.
- 1203. — Prior vendor.
- 1204. — Prior purchasers in general.
- 1205. — Possession under unrecorded instrument.
- 1206. — By tenant.
- 1207. — By tenant in common.
- 1208. — Joint possession of vendor and others.
- 1209. — By spouses.
- 1210. — By parent and child.
- 1211. Failure to record deed or other instrument.
- 1212. Consideration.
- 1213. — In general.
- 1214. — Payment of value.
- 1215. — Pre-existing debt.
- 1216. Purchasers from bona fide purchaser.
- 1217. Title and rights acquired by bona fide purchasers and equities and defenses against them.

323. RECEIVERS**X. RIGHTS AND LIABILITIES OF VENDOR
AND PURCHASER AS TO THIRD
PERSONS.(Cont'd)**

- 1218. — In general.
- 1219. — Protection against prior contract of sale.
- 1220. — Effect of sale under execution against vendor.
- 1221. — Protection from liens and incumbrances.
- 1222. — Right to timber and fixtures.
- 1223. — Protection of purchaser of legal title.
- 1224. — Title as against prior deed of gift.
- 1225. — Effect of notice to vendor in general.
- 1226. — Protection against fraud or other invalidity in prior conveyances.
- 1227. — Pleading purchase in good faith.
- 1228. Evidence as to purchase in good faith.
- 1229. — In general.
- 1230. — Presumptions, inferences, and burden of proof.
- 1231. — Admissibility.
- 1232. — Weight and sufficiency.
- 1233. Questions of law or fact.

XI. OPTIONS AND PREEMPTIVE RIGHTS.

- 1241. In general.
- 1242. Right of first refusal in general.
- 1243. Requisites and validity.
- 1244. — In general.
- 1245. — Consideration.
- 1246. — Unconscionability.
- 1247. Construction, operation, and performance.
- 1248. — In general.
- 1249. — Exercise in general.
- 1250. — Particular cases, contracts, and provisions.
- 1251. — Time for exercise.
 - (1). In general.
 - (2). Time as of the essence.
- 1252. — Notice of exercise.
- 1253. Modification.
- 1254. Extension or renewal.
- 1255. Revocation, rescission, or other termination.
- 1256. Enforcement, remedies, and proceedings.

**XI. OPTIONS AND PREEMPTIVE
RIGHTS.(Cont'd)**

- 1257. — In general.
- 1258. — Evidence.
- 1259. — Questions of law or fact.

XII. EXCHANGES OF REAL PROPERTY.

- 1271. In general.
- 1272. Requisites and validity.
- 1273. — In general.
- 1274. — Estoppel or waiver.
- 1275. Construction of contract.
- 1276. Modification or rescission.
- 1277. Performance of contract.
- 1278. Rights and liabilities of parties.
- 1279. Remedies.
- 1280. — In general.
- 1281. — Liens.
- 1282. — Pleading.
- 1283. — Evidence.
- 1284. — Damages.

323. RECEIVERS**SUBJECTS INCLUDED**

Care, management, and disposition of property, the subject of or involved in civil actions, by persons specially appointed by the court, for the purpose either of preservation of the property pending the litigation or of execution of the judgment therein

Nature and scope of the remedy in general

In what cases and for what purposes and as to what property it is allowed

Grounds of appointment, and jurisdiction over and proceedings to obtain appointment of receivers

Appointment and qualification of receivers, extension of receiverships, and effect thereof

Rights, duties, powers, and liabilities of receivers

Control, management, and disposition of property by them, their relation to the court, and actions by and against them

323. RECEIVERS

Dissolution of receiverships, removal, resignation, or discharge of receivers, and accounting by them

Liabilities on and enforcement of securities given to obtain, dissolve, etc., receiverships

Liabilities for wrongful procuring of appointment of receivers

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Corporation receiverships, see CORPORATIONS AND BUSINESS ORGANIZATIONS, FINANCE, BANKING, AND CREDIT, and other specific topics

Jurisdiction of particular courts in regard to receiverships, see COURTS and FEDERAL COURTS

Other remedies, receiverships merely incident to, see CREDITORS' REMEDIES and other specific topics

Particular forms of relief, receiverships in actions or proceedings for, see MORTGAGES AND DEEDS OF TRUST, PARTNERSHIP, and other specific topics

Particular kinds of property, receiverships affecting, see MINES AND MINERALS and other specific topics

Sequestration of property subject to conflicting claims, or to liens or other special rights, to preserve it during litigation, or to enforce orders or judgments, see SEQUESTRATION

I. NATURE AND GROUNDS OF RECEIVERSHIP, ¶1-28.

(A) NATURE AND SUBJECTS OF REMEDY, ¶1-11.

(B) GROUNDS OF APPOINTMENT OF RECEIVER, ¶12-28.

II. APPOINTMENT, QUALIFICATION, AND TENURE, ¶29-64.

III. TITLE TO AND POSSESSION OF PROPERTY, ¶65-80.

IV. MANAGEMENT AND DISPOSITION OF PROPERTY, ¶81-146.

(A) ADMINISTRATION IN GENERAL, ¶81-109.

(B) SUPERVISION AND INSTRUCTIONS OF COURT, ¶110-116.

(C) RECEIVER'S CERTIFICATES, ¶117-129.

(D) SALE AND CONVEYANCE OR REDELIVERY OF PROPERTY, ¶130-146.

V. ALLOWANCE AND PAYMENT OF CLAIMS, ¶147-163.

VI. ACTIONS, ¶164-189.

VII. ACCOUNTING AND COMPENSATION, ¶190-204.

VIII. FOREIGN AND ANCILLARY RECEIVERSHIPS, ¶205-211.

IX. LIABILITIES ON BONDS OR UNDERTAKINGS, ¶212-218.

X. WRONGFUL RECEIVERSHIPS, ¶219-220.

I. NATURE AND GROUNDS OF RECEIVERSHIP.

(A) NATURE AND SUBJECTS OF REMEDY.

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Remedy provisional or incidental to other relief.
4. Actions and proceedings in which receiver may be appointed.
5. Pendency and condition of cause.
6. Existence of and resort to other remedy.
7. Appointment of receiver incident to injunction.
8. Discretion of court.
9. Persons entitled to appointment of receiver.
10. Persons as against whom receiver may be appointed.
11. Property which may be subject of receivership.

(B) GROUNDS OF APPOINTMENT OF RECEIVER.

12. Right or interest in property requiring protection.
13. Fraud in obtaining possession of property.
14. Preservation and protection of property in general.
15. Preservation of property pending litigation.
16. — In general.
17. — Incapacity of party entitled to possession.
18. — Controversy between parties equally entitled to possession.
19. — Insolvency or misconduct of party in possession as against claimant.
20. Security for payment of demand.
21. — In general.

323. RECEIVERS**I. NATURE AND GROUNDS OF RECEIVERSHIP.(Cont'd)**

- 22. — Prevention of removal or other disposition of property.
- 23. — Pendency of appeal or other proceeding for review.
- 24. Performance or enforcement of judgment.
- 25. Defenses and grounds of opposition.
- 26. — In general.
- 27. — Title or possession of defendant or third person.
- 28. — Injury or inconvenience to defendant or others.

II. APPOINTMENT, QUALIFICATION, AND TENURE.

- 29. Jurisdiction and authority of court or judge.
 - (1). In general.
 - (2). Property or owner thereof beyond jurisdiction of court.
- 30. Appointment on court's own motion.
- 31. Appointment on consent of parties.
- 32. Form and requisites of application for appointment in general.
- 33. Time for application.
- 34. Parties on application.
- 35. Notice of application.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency and service.
 - (3). Defects, objections, and waiver.
- 36. Use and effect of pleadings on application.
- 37. Affidavits for appointment.
- 38. Counter affidavits and other evidence.
- 39. Scope of inquiry and questions considered on application.
- 40. Hearing and determination of application.
- 41. Conditions on granting application.
- 42. — In general.
- 43. — Priority of liens and claims.
- 44. Conditions on refusing application.
- 45. — In general.
- 46. — Giving security.
- 47. Order on application.
- 48. Eligibility for appointment.
- 49. Selection of receiver.
- 50. Acceptance of appointment.

II. APPOINTMENT, QUALIFICATION, AND TENURE.(Cont'd)

- 51. Bond.
- 52. Extension of receivership and subsequent appointments in other actions or proceedings.
- 53. Continuance of interlocutory receivership by final judgment.
- 54. Operation and effect of order in general.
- 55. Effect of irregular or invalid appointment.
- 56. Persons who may question validity of appointment.
- 57. Estoppel and waiver.
- 58. Revocation or modification of order of appointment.
- 59. Collateral attack on appointment.
- 60. Duration and termination of receivership in general.
- 61. Resignation or disqualification.
- 62. Removal.
- 63. Death.
- 64. Appointment of successor.

III. TITLE TO AND POSSESSION OF PROPERTY.

- 65. Effect of appointment and qualification of receiver.
- 66. Assignment and other transfers to receiver.
- 67. Property vesting in receiver in general.
- 68. Property fraudulently conveyed.
- 69. Title or right acquired by receiver in general.
- 70. Time of vesting of title or right.
- 71. Nature and right of possession of receiver.
- 72. Remedies and proceedings of receiver to obtain possession.
- 73. Protection of possession of receiver in general.
- 74. Interference with possession of receiver, and punishment thereof.
- 75. Set-offs and counterclaims against receiver.
- 76. Equities of third persons in general.
- 77. Liens on and adverse claims to property.
 - (1). In general.
 - (2). Mortgages.
 - (3). Judgments.
 - (4). Pledge.

323. RECEIVERS**III. TITLE TO AND POSSESSION
OF PROPERTY.(Cont'd)**

- (5). Attachment and execution.
- (6). Mechanics' liens.
- 78. Remedies to establish or enforce liens or claims.
- 79. Remedies of general creditors as against property.
- 80. Effect of appointment, and rights, of receiver, as to pending actions.

**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.****(A) ADMINISTRATION IN GENERAL.**

- 81. Representation by receiver of court and of parties.
- 82. Authority of receiver in general.
- 83. Discretion of receiver.
- 84. Delegation of powers.
- 85. Appraisal and inventory of property.
- 86. Custody, use, and care of property.
- 87. Collection of assets.
- 88. Determination of controversies.
- 89. Incumbrances and charges on property.
- 90. Assumption and performance of obligations.
- 91. Acceptance of lease.
- 92. Continuance and conduct of business.
- 93. Repairs and improvements.
- 94. Completion and extension of works.
- 95. Contracts of receiver in general.
- 96. Employees of receiver.
- 97. Loans and advances to receiver, and securities therefor.
- 98. Disposition of property, funds, and income, in general.
- 99. Expenditures.
 - (1). In general.
 - (2). Counsel fees.
 - (3). Taxes.
- 100. Investments and deposits.
- 101. Interest on funds.
- 102. Accounts, statements, and reports of receiver.
- 103. Individual interest in transactions.
- 104. Fraud or other misconduct of receiver.
- 105. Loss of property.
- 106. Reimbursement and indemnity to receiver.

**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.(Cont'd)**

- 107. Joint receivers.
- 108. Successive receivers.
- 109. Representatives of deceased receivers.
- (B) SUPERVISION AND INSTRUCTIONS OF COURT.**
 - 110. Jurisdiction to instruct and control receiver in general.
 - 111. Instructions or authority to receiver to act.
 - 111.1. — In general.
 - 112. — Subject-matter.
 - 113. — Proceedings to obtain.
 - 114. — Operation and effect.
 - 115. Confirmation of acts or contracts of receiver.
 - 116. Annulment or modification of acts or contracts of receiver.
- (C) RECEIVER'S CERTIFICATES.**
 - 117. Power to authorize issue.
 - 118. Purposes of issue.
 - 119. Necessity and grounds for issue.
 - 120. Consent of parties interested.
 - 121. Proceedings preliminary to issue.
 - 122. Interest on certificates.
 - 123. Sale or other disposition.
 - 124. Execution, issuance, and delivery.
 - 125. Validity in general.
 - 126. Negotiability and transfer.
 - 127. Rights and remedies of holders in general.
 - 128. Lien and priorities.
 - 129. Payment.
- (D) SALE AND CONVEYANCE OR
REDELIVERY OF PROPERTY.**
 - 130. Power to authorize sale by receiver.
 - 131. Necessity and grounds for sale.
 - 132. Authority and duty of receiver to sell in general.
 - 133. Proceedings to procure and order for sale.
 - 134. Notice of sale.
 - 135. Time, manner, and terms of sale.
 - 136. Bids and payment of or failure to comply with bid.
 - 137. Report and confirmation of sale.
 - 138. Validity of sale in general.

323. RECEIVERS**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.(Cont'd)**

- 139. Opening or vacating sale.
- 140. Collateral attack on sale.
- 141. Operation and effect of sale in general.
- 142. Title and rights of purchasers.
- 143. Liabilities of purchasers.
- 144. Conveyance and delivery to purchaser.
- 145. Proceeds of sale.
- 146. Reconveyance and redelivery of property on termination of receivership.

V. ALLOWANCE AND PAYMENT OF CLAIMS.

- 147. Liabilities of property or funds in hands of receiver.
- 148. Secured claims.
- 149. Presentation and filing of claims.
- 150. Objections to claims and proceedings thereon.
- 151. Allowance or disallowance.
- 152. Priorities in general.
- 153. Taxes.
- 154. Expenses of receivership.
 - (1). In general.
 - (2). Counsel fees.
- 155. Expenses of continuance of business by receiver.
- 156. Priority of unsecured debts, incurred before receivership, to pre-existing liens.
- 157. — In general.
- 158. — Purpose for which debt contracted.
 - (1). In general.
 - (2). Labor, supplies, and materials furnished.
 - (3). Nature and purpose of labor, supplies, and materials.
 - (4). Rentals and traffic and mileage balances.
- 159. — Diversion of income.
- 160. — Time of incurring debt.
- 161. — Charge against income or corpus.
- 162. Priorities of liens and incumbrances.
- 163. Payment.

VI. ACTIONS.

- 164. Capacity to sue and be sued in general.
- 165. Remedies of receiver in receivership proceeding.
- 166. Remedies against receiver in receivership proceeding.
- 167. Rights of action by receivers.

VI. ACTIONS.(Cont'd)

- 168. Rights of action against receivers.
- 169. Defenses against receivers.
- 170. Defenses by receivers.
- 171. Set-off and counterclaim.
- 172. Conditions precedent in general.
- 173. Leave of court to receiver to sue.
- 174. Leave of court to sue receiver.
 - (.5). In general.
 - (1). Necessity.
 - (2). Effect of failure to obtain leave.
 - (3). Waiver.
 - (4). Ground for grant or refusal, and discretion of court.
 - (5). Proceedings, and grant or refusal of leave.
- 175. Nature and form of remedy by action.
- 176. Jurisdiction.
- 177. Venue.
- 178. Parties.
- 179. Joinder or intervention of receiver in actions by others.
- 180. Process and appearance.
- 180.5. Dismissal and nonsuit.
- 181. Attachment and garnishment.
- 182. Injunction and stay.
- 183. Pleading.
- 184. Evidence.
- 185. Trial.
- 186. Judgment.
- 187. Execution and enforcement of judgment.
- 188. Appeal and error.
- 189. Costs.

VII. ACCOUNTING AND COMPENSATION.

- 190. Duty to account in general.
- 191. Proceedings for accounting.
- 192. Charges.
- 193. Credits in general.
- 194. Counsel fees and costs.
- 195. Compensation for services.
- 196. — In general.
- 197. — Nature of services.
- 198. — Amount.
 - (1). In general.
 - (2). Discretion of court.
- 199. Allowance and payment or recovery of compensation and expenses.
- 200. Liabilities of parties, property, or funds for compensation and expenses.

323. RECEIVERS**VII. ACCOUNTING AND
COMPENSATION.(Cont'd)**

- 201. Form and requisites of account.
- 202. Objections to account and proceedings thereon.
- 203. Settlement of account.
- 204. Discharge of receiver.

**VIII. FOREIGN AND ANCILLARY
RECEIVERSHIPS.**

- 205. Foreign appointment.
- 206. Ancillary appointment.
- 207. Title to and possession of property.
- 208. Management and disposition of property.
- 209. Rights and remedies of creditors.
- 210. Actions by or against foreign receivers.
- 211. Accounting.

**IX. LIABILITIES ON BONDS
OR UNDERTAKINGS.**

- 212. Nature and extent of liability.
- 213. Discharge of sureties.
- 214. Breach or fulfillment of condition.
- 215. Necessity of accounting and default by receiver.
- 216. Conclusiveness of adjudication against receiver.
- 217. Remedies in receivership proceeding.
- 218. Actions.

X. WRONGFUL RECEIVERSHIPS.

- 219. Nature and grounds of liability.
- 220. Actions.

324. RECEIVING STOLEN GOODS**SUBJECTS INCLUDED**

Fraudulently receiving, concealing or transporting property stolen, embezzled, or obtained by false pretenses, etc., by another, knowing it to have been so stolen, embezzled, or obtained

Nature and elements as a distinct crime of such receiving, concealing, or transporting

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Accessories, liabilities of persons receiving such goods as, see LARCENY and other specific topics

1. Nature and elements in general.
2. Property and stealing thereof.
3. Knowledge of theft and intent.
4. Receipt, possession, and concealment of property.
5. Defenses.
6. Persons liable.
7. Indictment or information.
 - (1). In general.
 - (2). Knowledge and intent.
 - (4). Allegations as to theft.
 - (5). Description, value, and ownership, or possession of property.
 - (6). Issues, proof, and variance.
8. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Knowledge of theft and intent.
9. Trial and review.
 - (.5). In general.
 - (1). Questions for jury.
 - (2). Instructions.
 - (3). Verdict.
 - (4). Review.
10. Sentence and punishment.

325. RECOGNIZANCES**SUBJECTS INCLUDED**

Obligations of record, entered into before a court or officer duly authorized, as security

326. RECORDS

for performance of some particular act required in a judicial proceeding

Nature, requisites, validity, construction, operation, and effect of such instruments in general

Breach and forfeiture of recognizances

Proceedings to enforce liabilities of sureties

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Particular proceedings, recognizances incident to, see BAIL, PROTECTION OF ENDANGERED PERSONS, APPEAL AND ERROR, COSTS, and other specific topics

1. Nature and essentials in general.
2. Requisites and validity.
3. Construction and operation.
4. Discharge of sureties.
5. Breach or fulfillment of condition.
6. Extent of liability.
7. Proceedings for fixing liability or forfeiture.
8. Relief from liability or forfeiture.
9. Entry of judgment on default or forfeiture.
10. Summary remedies for enforcement.
11. Scire facias.
12. Actions.

326. RECORDS

SUBJECTS INCLUDED

Public memorials in writing of acts, transactions and proceedings, and instruments in writing or copies thereof, preserved as evidence of the matters to which they relate

More particularly, such records affecting title to or interests in property and registration of titles to land

Nature and requisites of such records, deposit and reception of instruments for filing or record, and custody and care thereof

Amendment of defects therein

Access to and use of such records

Supplying lost records and establishing titles after loss or destruction of records thereof

Offenses of altering, defacing, mutilating, or destroying public records

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Constructive notice to purchasers, mortgagees, etc., operation of record as, see MORTGAGES AND DEEDS OF TRUST, REAL PROPERTY CONVEYANCES

Court records, making, custody, amendment, and operation in general, see COURTS

Particular instruments, and effect of record or of failure to record in general, see REAL PROPERTY CONVEYANCES, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Particular judicial proceedings, records of, see EVIDENCE, JUDGMENT, and topics relating to particular proceedings

Privileged communications and confidential relations, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Recording officers, see REGISTERS OF DEEDS

Transcripts and abstracts of records of judicial proceedings for purposes of review thereof, see APPEAL AND ERROR and other specific topics

I. IN GENERAL, ¶101–110.

II. NATURE, REQUISITES, AND CREATION OF RECORDS, ¶111–190.

(A) IN GENERAL, ¶111–120.

(B) PARTICULAR RECORDS, ¶121–180.

1. IN GENERAL, ¶121–130.

2. PROPERTY RECORDS AND WRITTEN INSTRUMENTS IN GENERAL, ¶131–150.

3. REGISTRATION OF TITLES TO LAND; TORRENS SYSTEM, ¶151–170.

4. ELECTRONIC AND DIGITAL RECORDS, ¶171–180.

(C) FEES AND CHARGES, ¶181–190.

III. CONSTRUCTION, OPERATION, AND EFFECT OF RECORDS, ¶191–210.

IV. CUSTODY, CARE, AND USE OF RECORDS, ¶211–270.

(A) IN GENERAL, ¶211–250.

(B) CRIMINAL PROSECUTIONS, ¶251–270.

326. RECORDS

- V. EXAMINATION, INSPECTION, AND DISCLOSURE; PUBLIC ACCESS, [§§271–630](#).
- (A) IN GENERAL, [§§271–290](#).
- (B) ACCESS TO AND DISCLOSURE OF PARTICULAR RECORDS, [§§291–340](#).
1. IN GENERAL, [§§291–300](#).
2. RECORDS CONCERNING INDIVIDUALS; PRIVACY AND CONFIDENTIALITY, [§§301–340](#).
- (C) GENERAL DISCLOSURE REQUIREMENTS; FREEDOM OF INFORMATION, [§§341–480](#).
1. IN GENERAL, [§§341–370](#).
2. PARTICULAR MATTERS, [§§371–430](#).
3. LOSS OR FORFEITURE OF EXEMPTION; WAIVER AND ESTOPPEL, [§§431–450](#).
4. REQUESTS FOR DISCLOSURE, [§§451–460](#).
5. COMPLIANCE WITH DISCLOSURE REQUESTS, [§§461–480](#).
- (D) MEANS OF ACCESS OR DISCLOSURE, [§§481–500](#).
- (E) ADMINISTRATION AND ENFORCEMENT OF GOVERNING LAWS, [§§501–510](#).
- (F) ADMINISTRATIVE REVIEW OF ADMINISTRATIVE DECISIONS, [§§511–520](#).
- (G) JUDICIAL PROCEEDINGS CONCERNING ACCESS OR DISCLOSURE, [§§521–600](#).
- (H) PENALTIES AND SANCTIONS, [§§601–610](#).
- (I) CRIMINAL PROSECUTIONS, [§§611–630](#).
- VI. ACCESS TO JUDICIAL RECORDS, [§§631–690](#).
- (A) IN GENERAL, [§§631–660](#).
- (B) PROCEEDINGS CONCERNING ACCESS TO JUDICIAL RECORDS, [§§661–690](#).
- VII. EXPUNGEMENT, [§§691–715](#).

I. IN GENERAL.

101. In general.
102. Constitutional, statutory, and regulatory provisions.
103. — In general.
104. — Purpose and construction in general.
- (1). In general.
- (2). Federal and presidential records.

I. IN GENERAL.(Cont'd)

- (3). Property records and written instruments in general.
- (4). Registration of titles to land; Torrens system.
105. — Power to enact; validity.
- (1). In general.
- (2). Federal and presidential records.
- (3). Property records and written instruments in general.
- (4). Registration of titles to land; Torrens system.
106. — Retroactive or prospective operation.
- (1). In general.
- (2). Federal and presidential records.
- (3). Property records and written instruments in general.
- (4). Registration of titles to land; Torrens system.
107. What law governs.
108. Relation between state and federal law; preemption.

II. NATURE, REQUISITES, AND CREATION OF RECORDS.**(A) IN GENERAL.**

111. In general.
112. Public records in general.
113. Obligation to make or keep records in general.

(B) PARTICULAR RECORDS.**1. IN GENERAL.**

121. In general.
122. Official records.
123. Federal records.
124. Presidential records.

2. PROPERTY RECORDS AND WRITTEN INSTRUMENTS IN GENERAL.

131. In general.
132. Deposit and reception.
133. Recording.
134. — In general.
135. — Purpose of recording.
136. — Instruments or other material subject to or suitable for recording.
- (1). In general.

326. RECORDS**II. NATURE, REQUISITES, AND CREATION OF RECORDS.**(Cont'd)

- (2). Originals or copies.
- 137. — Persons obligated or entitled to record.
 - (1). In general.
 - (2). Title or interest to support.
- 138. Filing.
- 139. — In general.
- 140. — Time for filing.

3. REGISTRATION OF TITLES TO LAND; TORRENS SYSTEM.

- 151. In general.
- 152. Purpose of registration.
- 153. Persons obligated or entitled to register.
- 154. — In general.
- 155. — Title or interest to support.
- 156. Jurisdiction and power of court.
- 157. Time for proceedings; limitations and laches.
- 158. Parties; standing.
- 159. Process or other notice.
- 160. Pleading, petition, application, or motion.
- 161. Evidence.
- 162. Examination of titles and report.
- 163. Trial or hearing.
- 164. Judgment, order, or decree.
- 165. Opening or vacating.
- 166. Assurance or indemnity funds.
- 167. Review.
- 168. Costs and fees.

4. ELECTRONIC AND DIGITAL RECORDS.

- 171. In general.
- 172. Property records.
- 173. Filing.

(C) FEES AND CHARGES.

- 181. In general.
- 182. Electronic and digital records.

III. CONSTRUCTION, OPERATION, AND EFFECT OF RECORDS.

- 191. In general.
- 192. Conclusiveness in general.
- 193. Particular records.
- 194. — In general.
- 195. — Official records.

III. CONSTRUCTION, OPERATION, AND EFFECT OF RECORDS.(Cont'd)

- 196. — Federal records.
- 197. — Presidential records.
- 198. — Property records and written instruments in general.
- 199. — Registration of titles to land; Torrens system.
 - (1). In general.
 - (2). Particular matters affecting or affected by registered title.
- 200. — Electronic and digital records.
- 201. Notice.
- 202. — In general.
- 203. — Actual or constructive notice in general.
- 204. — Registration of titles to land; Torrens system.
- 205. — Electronic and digital records.

IV. CUSTODY, CARE, AND USE OF RECORDS.**(A) IN GENERAL.**

- 211. In general.
- 212. Offenses in general.
- 213. Preservation and retention of records in general.
- 214. — In general.
- 215. — Loss or destruction of records in general.
- 216. — Particular records.
 - (1). In general.
 - (2). Official records.
 - (3). Federal records.
 - (4). Presidential records.
 - (5). Property records and written instruments in general.
 - (6). Registration of titles to land; Torrens system.
 - (7). Electronic and digital records.
- 217. — Expiration or termination of obligation to preserve or retain records.
- 218. — Authorized destruction or disposal of records.
- 219. Taking, removing, or secreting records.
- 220. Mutilating, tampering with, or altering records.
- 221. — In general.
- 222. — Effect of alterations.
- 223. Cancellation or surrender of records.

326. RECORDS**IV. CUSTODY, CARE, AND USE
OF RECORDS.(Cont'd)**

- 224. Actions and proceedings in general.
- 225. — In general.
- 226. — Federal and presidential records.
- 227. Supplying or restoring records or instruments lost or destroyed.
- 228. — In general.
- 229. — Nature, grounds, and rights of restoration.
- 230. — Form of remedy, jurisdiction, and power of court.
- 231. — Time for proceedings; limitations and laches.
- 232. — Parties; standing.
- 233. — Process or other notice.
- 234. — Pleading, petition, application, or motion.
- 235. — Evidence and affidavits.
- 236. — Trial, judgment, and review.
- 237. — Operation and effect.
- 238. Establishment of title to land after loss or destruction of records thereof.
- 239. Defects and omissions.
- 240. — In general.
- 241. — Amendment and correction in general.
- 242. — Particular records.
 - (1). In general.
 - (2). Property records and written instruments in general.
 - (3). Registration of titles to land; Torrens system.
 - (4). Electronic and digital records.
- 243. — Proceedings and review.
- 244. Recovery of records.

(B) CRIMINAL PROSECUTIONS.

- 251. In general.
- 252. Defenses and mitigating circumstances.
- 253. Indictment or other charging instrument.
- 254. Evidence.
- 255. — In general.
- 256. — Presumptions, inferences, and burden of proof.
- 257. — Admissibility.
- 258. — Weight and sufficiency.
- 259. Trial.
- 260. — In general.
- 261. — Questions of law or fact.

**IV. CUSTODY, CARE, AND USE
OF RECORDS.(Cont'd)**

- 262. — Instructions.
- 263. Sentence and punishment.

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC ACCESS.****(A) IN GENERAL.**

- 271. In general.
- 272. Constitutional, statutory, and regulatory provisions.
- 273. — In general.
- 274. — Purpose and construction in general.
 - (1). In general.
 - (2). Records concerning individuals; privacy and confidentiality.
 - (3). General disclosure requirements; freedom of information.
- 275. — Power to enact; validity.
 - (1). In general.
 - (2). Records concerning individuals; privacy and confidentiality.
 - (3). General disclosure requirements; freedom of information.
- 276. — Retroactive or prospective operation.
 - (1). In general.
 - (2). Records concerning individuals; privacy and confidentiality.
 - (3). General disclosure requirements; freedom of information.
- 277. What law governs.
- 278. Relation between state and federal law; preemption.
- 279. Right of access in general.
- 280. — In general.
- 281. — Under common law.
- 282. — Under constitutional provisions.
- 283. Limitations on access in general.
- 284. Persons entitled to or protected from access in general.

**(B) ACCESS TO AND DISCLOSURE
OF PARTICULAR RECORDS.****1. IN GENERAL.**

- 291. In general.
- 292. Official records.
- 293. Federal records.
- 294. Presidential records.

326. RECORDS**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 295. Property records and written instruments in general.
- 296. Registration of titles to land; Torrens system.
- 297. Records containing financial or commercial information.
- 298. Records containing classified information.
- 299. Electronic and digital records.

**2. RECORDS CONCERNING INDIVIDUALS;
PRIVACY AND CONFIDENTIALITY.**

- 301. In general.
- 302. Persons and entities regulated.
- 303. — In general.
- 304. — Agencies in general.
- 305. — Particular persons and entities.
- 306. — Private persons and entities.
- 307. Persons and entities protected.
- 308. — In general.
- 309. — Individuals in general.
- 310. — Personal nature of individual rights; assertion of rights of others.
- 311. — Decedents.
- 312. — Corporations and other organizations.
- 313. — Foreign nationals and nonresident aliens.
- 314. Collection, maintenance, use, and dissemination of records concerning individuals in general.
- 315. — In general.
- 316. — System of records.
- 317. — Access and disclosure.
 - (1). In general.
 - (2). Request or consent.
 - (3). Access by individual who is subject of record.
 - (4). Accounting of disclosures.
- 318. — Exceptions and exemptions.
 - (1). In general.
 - (2). Routine use.
- 319. — Electronic and digital records.
- 320. Particular subjects of records concerning individuals.
- 321. — In general.

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 322. — Personal identifying information in general.
- 323. — Financial or commercial information in general.
- 324. — Health and medical information.
 - (1). In general.
 - (2). Drug or alcohol use and treatment.
 - (3). Infectious diseases.
- 325. — Biometric information.
- 326. — Investigatory and law enforcement matters.
 - (1). In general.
 - (2). Prison records.
 - (3). Victim information.
- 327. — Juvenile justice matters.
- 328. — Education-related information.
- 329. — Employment and occupational information.
 - (1). In general.
 - (2). Correctional employees.
 - (3). Professionals; licensing.
- 330. — Motor vehicles; driving records.
- 331. — Social Security information.
- 332. Accuracy of records concerning individuals; defects and omissions.
- 333. — In general.
- 334. — Amendment and correction in general.
- 335. — Particular records.

**(C) GENERAL DISCLOSURE REQUIREMENTS;
FREEDOM OF INFORMATION.****1. IN GENERAL.**

- 341. In general.
- 342. Agencies or custodians affected; persons and entities regulated.
- 343. — In general.
- 344. — Public employees.
- 345. — Private persons and entities.
 - (1). In general.
 - (2). Parties performing government functions in general.
 - (3). Public contractors.
- 346. Persons entitled to disclosure; interest or purpose.
- 347. — In general.

326. RECORDS**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 348. — Commercial use.
- 349. — Media.
- 350. — Prisoners.
- 351. — Noncitizens.
- 352. Matters subject to disclosure in general.
- 353. — In general.
- 354. — Nature and definition of 'record' or other material subject to requirements.
- 355. — Presumption of disclosure.
- 356. — Records or other material not created by custodian.
- 357. — Possession, custody, or control.
- 358. Exceptions and exemptions from disclosure in general.
- 359. — In general.
- 360. — Rules of construction.
- 361. Discretion and balancing of interests in general.
- 362. — In general.
- 363. — Non-statutory exceptions; rule of reason.

2. PARTICULAR MATTERS.

- 371. In general.
- 372. Public safety considerations in general.
- 373. National security considerations.
- 374. — In general.
- 375. — Classified information.
- 376. Internal matters and practices.
- 377. — In general.
- 378. — Memoranda and letters in general.
- 379. — Material pertaining to pending litigation in general.
- 380. — Deliberative process; deliberative privilege.
 - (1). In general.
 - (2). Predecisional matters.
- 381. — Presidential communications; executive privilege.
- 382. — Attorney-client communications and privilege.
- 383. — Work product materials and privilege.
- 384. Matters exempted or prohibited from disclosure under other laws.
- 385. — In general.

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 386. — Grand juries.
- 387. — Tax records.
- 388. — Child abuse and neglect registries.
- 389. — Advisory committee records.
- 390. Commercial or financial information.
- 391. — In general.
- 392. — Privileged or confidential information in general.
- 393. — Trade secrets.
 - (1). In general.
 - (2). Particular cases.
- 394. — Customer lists.
- 395. — Valuable formulae, research data, designs, and drawings.
- 396. — Information concerning public contracts; bidding.
- 397. — Information concerning collective bargaining.
- 398. Personal interests and privacy considerations in general.
- 399. — In general.
- 400. — Discretion and balancing of interests in general.
- 401. — Health and medical information.
- 402. — Danger to personal life or safety.
- 403. Employment information; personnel practices and files.
- 404. — In general.
- 405. — Hiring, promotion, and demotion.
- 406. — Work rules; discipline.
- 407. — Discharge or firing.
- 408. — Compensation and benefits.
- 409. Investigatory and law enforcement matters.
- 410. — In general.
- 411. — Discretion and balancing of interests in general.
- 412. — Public safety considerations in general.
- 413. — Personal interests and privacy considerations in general.
- 414. — Interference with enforcement proceedings.
- 415. — Techniques, procedures, or guidelines for investigations or prosecutions.
 - (1). In general.

326. RECORDS

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- (2). Risks of disclosure; circumvention of the law.
- 416. — Uncharged suspects.
- 417. — Informants and confidential sources.
- 418. — Prisons and jails.
- 419. — Civil investigations.
- 420. — Whistleblowers.
- 421. Regulation or supervision of financial institutions.
- 422. Information concerning wells.

**3. LOSS OR FORFEITURE OF EXEMPTION;
WAIVER AND ESTOPPEL.**

- 431. In general.
- 432. Prior disclosure in general.
- 433. Disclosure by others.
- 434. Nature of already-disclosed material.
- 435. — In general.
- 436. — Material in public domain.
- 437. Matters under Congressional investigation.
- 438. — In general.
- 439. — National security; classified information.
- 440. Official acknowledgment.
- 441. Waiver or other loss of privilege.

4. REQUESTS FOR DISCLOSURE.

- 451. In general; necessity.
- 452. Sufficiency and specificity of request.
- 453. — In general.
- 454. — Particular cases.
- 455. Time for request.
- 456. Requests for expedited processing.

5. COMPLIANCE WITH DISCLOSURE REQUESTS.

- 461. In general; necessity.
- 462. Duty to search.
- 463. Burdensomeness of request.
- 464. Sufficiency and specificity of response.
- 465. — In general.
- 466. — Particular cases.
- 467. Refusal to confirm or deny existence of requested material; Glomar response.
- 468. — In general; necessity.

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 469. — Grounds and justification; factors considered.
 - (1). In general.
 - (2). Particular cases.
- 470. — Waiver or other loss of right to assert such response.
- 471. Time for response.
- 472. — In general.
- 473. — Expedited processing.
- 474. — Extension of time.
- 475. Duty to create requested material.
- 476. Segregability; excision, redaction, or deletion.
- 477. — In general.
- 478. — Grounds and justification; factors considered.

(D) MEANS OF ACCESS OR DISCLOSURE.

- 481. In general.
- 482. Indexes in general.
- 483. — In general.
- 484. — Property records and written instruments.
- 485. Withheld or disputed material; Vaughn index.
- 486. — In general; necessity.
- 487. — Grounds and justification; factors considered.
- 488. — Sufficiency and specificity.
- 489. On-site access; reading rooms.
- 490. Electronic and digital records.
- 491. Making and use of copies.
- 492. — In general.
- 493. — Number of copies.
- 494. Fees and charges.
- 495. — In general.
- 496. — Waiver.

**(E) ADMINISTRATION AND ENFORCEMENT
OF GOVERNING LAWS.**

- 501. In general.
- 502. Administrative agencies and proceedings.
- 503. — In general.
- 504. — Powers, duties, and liabilities.
- 505. — Rules and rulemaking.
- 506. — Adjudications.

326. RECORDS**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

507. Administrative construction of statutes and regulations; judicial deference.

**(F) ADMINISTRATIVE REVIEW OF ADMINISTRATIVE
DECISIONS.**

- 511. In general.
- 512. Conditions precedent.
- 513. Decisions reviewable.
- 514. Persons entitled to seek review; standing; parties.
- 515. Preservation of error; waiver and estoppel; record.
- 516. Time for proceedings.
- 517. Scope, standard, and extent of review.
- 518. Determination and disposition.
- 519. Conclusiveness of determination on administrative review.

**(G) JUDICIAL PROCEEDINGS CONCERNING
ACCESS OR DISCLOSURE.**

- 521. In general.
- 522. Nature, form, right, and elements of action or other proceeding.
- 523. — In general.
- 524. — Proceedings to obtain or compel access or disclosure.
- 525. — Proceedings to prevent access or disclosure.
- 526. — Proceedings to amend or correct records.
- 527. — Judicial review of administrative decisions.
- 528. Jurisdiction and venue.
- 529. Conditions precedent in general.
- 530. Exhaustion of other remedies.
- 531. Exclusive, concurrent, and conflicting remedies and proceedings.
- 532. — In general.
- 533. — Stay of administrative proceedings.
- 534. Time for proceedings; limitations and laches.
- 535. — In general.
- 536. — Time for judicial review of administrative decisions.
- 537. Decisions reviewable.
- 538. — In general.
- 539. — Finality.
- 540. — Mootness and ripeness.

**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.(Cont'd)**

- 541. Parties.
- 542. — In general.
- 543. — Persons entitled to pursue proceedings; standing.
- 544. — Persons liable.
- 545. Preservation of error; waiver and estoppel; record.
- 546. Pleading, petition, application, or motion.
- 547. Evidence.
- 548. — In general.
- 549. — Presumptions, inferences, and burden of proof.
- 550. — Admissibility.
- 551. — Degree of proof.
- 552. — Weight and sufficiency.
- 553. Trial or hearing.
- 554. — In general.
- 555. — Scope of inquiry.
 - (1). In general.
 - (2). On judicial review of administrative decisions.
- 556. — Time for trial or hearing.
- 557. — Questions of law or fact.
- 558. In camera review or inspection.
- 559. Findings and conclusions.
- 564. Judgment, order, or decree.
- 565. — In general.
- 566. — Protective order.
- 567. Injunction.
- 568. — In general.
- 569. — Compelling access or disclosure.
- 570. — Preventing access or disclosure.
- 571. — Preliminary injunctions and temporary restraining orders.
 - (1). In general.
 - (2). Compelling access or disclosure.
 - (3). Preventing access or disclosure.
- 572. — Proceedings to impose; evidence.
- 573. Damages or other monetary relief.
- 574. — In general.
- 575. — Punitive or exemplary damages.
- 576. — Proceedings to award; evidence.
- 577. Further judicial review.
- 578. — In general.
- 579. — Decisions subject to further review.

326. RECORDS**V. EXAMINATION, INSPECTION, AND
DISCLOSURE; PUBLIC
ACCESS.**(Cont'd)

- 580. — Persons entitled to seek further review; standing; parties.
- 581. — Preservation of error; waiver and estoppel.
- 582. — Record.
- 583. — Time for proceedings.
- 584. — Stay pending further review.
- 585. — Scope, standard, and extent of further review.
 - (1). In general.
 - (2). Proceedings to obtain or compel access or disclosure.
 - (3). Proceedings to prevent access or disclosure.
 - (4). Proceedings to amend or correct records.
- 586. — Presumptions and burdens on further review.
- 587. — Harmless and reversible error.
- 588. — Determination and disposition.
- 589. Costs and fees.
- 590. — In general.
- 591. — Proceedings to award; evidence.

(H) PENALTIES AND SANCTIONS.

- 601. In general.
- 602. Particular cases.
- 603. Review.

(I) CRIMINAL PROSECUTIONS.

- 611. In general.
- 612. Defenses and mitigating circumstances.
- 613. Indictment or other charging instrument.
- 614. Evidence.
- 615. — In general.
- 616. — Presumptions, inferences, and burden of proof.
- 617. — Admissibility.
- 618. — Weight and sufficiency.
- 619. Trial.
- 620. — In general.
- 621. — Questions of law or fact.
- 622. — Instructions.
- 623. Sentence and punishment.

VI. ACCESS TO JUDICIAL RECORDS.**(A) IN GENERAL.**

- 631. In general.
- 632. Constitutional, statutory, and regulatory provisions.
- 633. — In general.
- 634. — Purpose and construction in general.
- 635. — Power to enact; validity.
- 636. — Retroactive or prospective operation.
- 637. What law governs.
- 638. Relation between state and federal law; preemption.
- 639. Right of access and limitations thereon in general.
- 640. — In general.
- 641. — Persons and entities regulated or protected.
- 642. — Records subject to right of access in general.
- 643. — Privacy and confidentiality.
- 644. — Sealing and unsealing.
- 645. — Impoundment.
- 646. Particular judicial records.
- 647. — In general.
- 648. — Personal identifying information in general.
- 649. — Financial or commercial information in general.
- 650. — Health and medical information.
- 651. — Investigative material.
 - (1). In general.
 - (2). Search warrants and related material.
 - (3). Independent counsel reports.
- 652. — Paternity, adoption, and abortion.
- 653. — Bankruptcy and debt collection.
- 654. — Material released in discovery.
- 655. — National security; classified information.
- 656. Sealing, unsealing, and impoundment of judicial records in criminal proceedings.

**(B) PROCEEDINGS CONCERNING ACCESS
TO JUDICIAL RECORDS.**

- 661. In general.
- 662. Proceedings to seal or impound judicial records in general.

326. RECORDS**VI. ACCESS TO JUDICIAL RECORDS.**(Cont'd)

- 663. Proceedings to open or unseal judicial records in general.
- 664. Conditions precedent; exhaustion of other remedies.
- 665. Exclusive, concurrent, and conflicting remedies.
- 666. Time for proceedings; limitations and laches.
- 667. Persons entitled to seek relief; parties; standing.
- 668. Pleading, petition, application, or motion.
- 669. Evidence.
- 670. — In general.
- 671. — Presumptions, inferences, and burden of proof.
- 672. — Admissibility.
- 673. — Degree of proof.
- 674. — Weight and sufficiency.
- 675. Trial or hearing.
- 676. Judgment, order, or decree.
- 677. Review.
- 678. — In general.
- 679. — Proceedings to seal or impound judicial records.
- 680. — Proceedings to open or unseal judicial records.
- 681. Costs and fees.

VII. EXPUNGEMENT.

- 691. In general.
- 692. Constitutional, statutory, and regulatory provisions.
- 693. — In general.
- 694. — Purpose and construction in general.
- 695. — Power to enact; validity.
- 696. — Retroactive or prospective operation.
- 697. What law governs.
- 698. Relation between state and federal law; preemption.
- 699. Grounds for expungement in general.
- 700. Particular records.
- 701. — In general.
- 702. — Motor vehicles; driving records.
- 703. Proceedings concerning expungement.
- 704. — In general.

VII. EXPUNGEMENT.(Cont'd)

- 705. — Conditions precedent; exhaustion of other remedies.
- 706. — Exclusive, concurrent, and conflicting remedies.
- 707. — Time for proceedings; limitations and laches.
- 708. — Persons entitled to seek expungement; parties; standing.
- 709. — Pleading, petition, application, or motion.
- 710. — Evidence.
- 711. — Trial or hearing.
- 712. — Judgment, order, or decree.
- 713. — Review.
- 714. — Costs and fees.
- 715. Operation and effect.

327. REFERENCE**SUBJECTS INCLUDED**

Judicial examination and determination of issues and questions arising in civil cases in general by persons especially selected for the purpose

Nature of the proceeding, power to refer causes for trial, and what causes may be so referred, by consent of parties or compulsorily

Grounds for ordering references, and proceedings therefor

Appointment, qualification, rights, powers, and duties of referees, and control over them exercised by courts

Trials or hearings before referees

Reports and findings of referees, objections and exceptions thereto, setting aside such reports or findings, and recommitting cause for further report

Operation and effect of report and findings in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arbitrators chosen by parties, submissions of controversies to, see ALTERNATIVE DIS-

327. REFERENCE**PUTE RESOLUTION, LABOR AND EMPLOYMENT**

Commissioners of courts, see **COURT COMMISSIONERS**

Equity, references to masters in equity, auditors, etc., to inform the court, see **EQUITY** and topics relating to particular proceedings

Jury trial, right to and waiver thereof in general, see **JURY**

Particular forms or classes of action, references in, see **DIVORCE, ACCOUNT, ACTION ON**, and other specific topics

Submission of controversies to courts on statements of facts agreed upon, without action, see **SUBMISSION OF CONTROVERSY**

I. NATURE, GROUNDS, AND ORDER OF REFERENCE, ¶1-34.**II. REFEREES AND PROCEEDINGS, ¶35-77.****III. REPORT AND FINDINGS, ¶78-107.****I. NATURE, GROUNDS, AND ORDER OF REFERENCE.**

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Matters subject to reference in general.
4. Issues and questions which may be referred on consent.
5. Compulsory reference for trial of issues.
- 5.1. — In general.
6. — Power to refer in general.
7. — Nature of cause or of issues.
 - (1). In general.
 - (2). Actions or issues involving fraud.
 - (3). Equitable actions or issues.
 - (4). Tort or contract.
8. — Examination of account or numerous items.
 - (1). In general.
 - (2). What is an account.
 - (3). What is a long account.
 - (4). What is examination of long account.
 - (5). Numerous items, but only one issue.
 - (6). Scope and effect of pleadings.
 - (7). Showing necessity for examination.

I. NATURE, GROUNDS, AND ORDER OF REFERENCE.(Cont'd)

- (8). Account only collaterally involved.
9. — Difficult questions of law.
10. — Part of issues.
11. — Counterclaim or cross-action.
12. Compulsory reference of incidental questions and matters.
 - 12.1. — In general.
13. — Power to refer in general.
14. — Questions of fact on motions or other proceedings.
15. — Information of court.
16. — Taking and report of testimony.
17. — Taking account after interlocutory or final judgment.
18. Condition of cause and time for application.
19. Right to reference in general.
20. Discretion of court.
21. Successive applications.
22. Admissions to prevent reference.
23. Parties as between whom reference may be ordered.
24. Consent to reference.
25. Reference on court's own motion.
26. Jurisdiction and authority to order reference.
27. Form and requisites of application, and proceedings thereon.
28. Conditions on granting or refusing reference.
29. Order on application.
30. Modification of order.
31. Vacating or setting aside order.
32. Death of party.
33. Operation and effect of reference.
34. Objections and exceptions to order.

II. REFEREES AND PROCEEDINGS.

35. Authority to appoint in general.
36. Number of referees.
37. Eligibility and qualifications.
38. Selection.
39. — In general.
40. — Consent of parties.
41. Objections to referee.
42. Oath.
43. Failure to qualify or act.

327. REFERENCE**II. REFEREES AND PROCEEDINGS.(Cont'd)**

- 44. Resignation or disqualification.
- 45. Removal.
- 46. Death of referee.
- 47. Nature and scope of authority in general.
- 48. Effect of provisions of order of reference.
- 49. Effect of provisions of interlocutory or final judgment or decree.
- 50. Supervision and control by court.
- 51. Mode and course of proceeding in general.
- 52. Proceedings before several referees.
- 53. Place of trial or hearing.
- 54. Time of trial or hearing.
- 55. Notice of trial or hearing.
- 56. Appearance and participation of parties in proceedings.
- 57. Adjournments.
- 58. Pleadings and amendments.
- 59. Motions and other incidental proceedings before referee.
- 60. Dismissal of action or proceeding before hearing.
- 61. Conduct of trial or hearing in general.
- 62. Reception of evidence.
- 63. — In general.
- 64. — Reopening case for further evidence.
- 65. — Objections and exceptions.
- 66. — Effect of error in admission of evidence.
- 67. — Effect of error in exclusion of evidence.
- 67.5. Rulings on weight and sufficiency of evidence.
- 68. — In general.
- 69. — Dismissal or nonsuit.
- 70. Rulings on questions of law.
- 71. Examination of witnesses for purpose of report of testimony.
- 72. Taking and stating account.
- 73. Decision or opinion in general.
- 74. Opening or setting aside default.
- 75. Allowance by referee of rehearing.
- 75.5. Termination of authority.
- 76. Compensation of referee.
 - (1). In general.
 - (2). Stipulations and agreements.
 - (3). Persons liable and apportionment.

II. REFEREES AND PROCEEDINGS.(Cont'd)

- (4). Amount, items, and computation.
- (5). Payment and enforcement thereof.
- 77. Liabilities of referee.

III. REPORT AND FINDINGS.

- 78. Duty to make report in general.
- 79. Time for report.
- 80. Effect of delay in making report.
- 81. Proceedings to compel report.
- 82. Making and form of report.
- 83. Requisites and sufficiency of report in general.
- 84. Findings of fact and conclusions of law.
- 84.1. — In general.
- 85. — Duty to make.
- 86. — Facts and conclusions to be found.
- 87. — Requests for findings.
- 88. — Making and form.
- 89. — Requisites and sufficiency.
- 90. — Failure to find on particular questions.
- 91. — Defects and errors.
- 92. — Amendment or correction.
- 93. — Additional findings.
- 94. Report of evidence with decision or findings.
- 95. Report on reference to take testimony.
- 96. Report on reference to take account.
- 97. Amended and supplemental report.
- 98. Filing and record.
- 99. Operation and effect.
 - (1). In general.
 - (2). Conclusiveness in general.
 - (3). Conclusions of law.
 - (4). Findings of fact.
 - (5). Agreement of parties.
 - (6). Report as evidence.
- 100. Objections and exceptions, and hearing thereof in general.
 - (.5). In general.
 - (1). Necessity of objection or exception.
 - (2). Nature and scope of exceptions and objections in general.
 - (3). Time for excepting.
 - (4). Requisites and sufficiency of objections and exceptions.

328. REFORMATION OF INSTRUMENTS**III. REPORT AND FINDINGS.(Cont'd)**

- (5). Additional or amended exceptions.
- (6). Hearing and determination.
- (7). Failure to object or except, and waiver of objections.
- 101. Recommittal.
 - (.5). In general.
 - (1). Jurisdiction and power to recommit.
 - (2). Discretion of court.
 - (3). Nature and scope of remedy.
 - (4). Grounds for recommittal.
 - (5). Motion for recommittal.
 - (6). Order of recommittal.
 - (7). Proceedings by referees after recommittal.
 - (8). Report after recommittal.
- 102. Confirmation.
 - (1). In general.
 - (2). Necessity for confirmation.
 - (3). Time for confirmation.
 - (4). Proceedings.
 - (5). Effect of confirmation.
- 103. Setting aside.
 - (1). In general.
 - (2). Grounds.
- 104. Appointment of new referee.
- 105. Submission of issues to jury.
- 106. Different decision or findings by court.
- 107. Review on motion in trial court.

328. REFORMATION OF INSTRUMENTS**SUBJECTS INCLUDED**

Actions for correction of instruments in writing which fail to express the real intention of the parties thereto, to conform to such intention

Nature and scope of the remedy in general

What instruments may be so reformed

Grounds of such actions and defenses thereto

Jurisdiction to decree such reformation and proceedings therefor

Incidental or alternative relief

Judgments or decrees and operation and effect thereof, and costs in actions for such reformation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Alteration by persons of instruments in writing, see ALTERATION OF INSTRUMENTS

Cancellation, surrender, etc., of instruments, actions for, see CANCELLATION OF INSTRUMENTS

Employee Retirement Income Security Act, see LABOR AND EMPLOYMENT

Insurance policies, see INSURANCE XIII(K)

Mistake, fraud, etc., as grounds of invalidity of conveyances or contracts or as defenses to actions thereon, see CONTRACTS, REAL PROPERTY CONVEYANCES, and topics relating to particular classes of conveyances and contracts

Pension and benefit plans, see LABOR AND EMPLOYMENT

Tax deeds, see TAXATION

Trusts, see TRUSTS

Usurious contracts and transactions, see USURY

Wills, see WILLS

I. RIGHT OF ACTION AND DEFENSES,

⌚1-29.

II. PROCEEDINGS AND RELIEF,

⌚30-51.

I. RIGHT OF ACTION AND DEFENSES.

- 1. Nature and scope of remedy.
- 2. Right to, and necessity of, reformation in general.
- 3. Inadequacy of remedy at law.
- 4. Discretion of court.
- 5. Instruments which may be reformed.
- 6. — In general.
- 7. — Invalidity of instrument.
- 8. — Voluntary conveyances.
- 9. — Executed contracts.
- 10. Matters subject to reformation.
- 11. — In general.

328. REFORMATION OF INSTRUMENTS**I. RIGHT OF ACTION AND DEFENSES.**(Cont'd)

- 12. — Defective execution.
- 13. — Matter of description.
 - (1). In general.
 - (2). Erroneous inclusion or failure to make reservation.
 - (3). Omission of property.
 - (4). Estate or interest in property.
- 14. — Legal operation and effect.
- 15. Grounds for reformation.
- 16. — In general.
- 17. — Mistake of fact.
 - (1). In general.
 - (2). By scrivener or draftsman.
- 18. — Mistake of law.
- 19. — Mutuality of mistake.
 - (1). In general.
 - (2). What mistakes are mutual.
- 20. — Mistake and fraud.
- 21. — Fraud.
- 22. Ratification.
- 23. Estoppel or waiver.
- 24. Conditions precedent.
- 25. Defenses and objections to relief.
- 26. Persons entitled to reformation.
- 27. Persons as to whom instruments may be reformed.
- 28. — In general.
- 29. — Bona fide purchasers.

II. PROCEEDINGS AND RELIEF.

- 30. Form of remedy.
- 31. Jurisdiction and venue.
- 32. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 33. Parties.
- 34. Process and appearance.
- 35. Pleading.
 - 35.1. — In general.
- 36. — Bill, complaint, or petition.
 - (1). In general.
 - (2). Allegations as to instrument as made and as intended.
 - (3). Grounds for reformation.
 - (4). Prayer.
- 37. — Cross-bill, cross-complaint, or counterclaim for reformation.
- 38. — Plea or answer, and subsequent pleadings.

II. PROCEEDINGS AND RELIEF.(Cont'd)

- 39. — Demurrer.
- 40. — Amendments.
- 41. — Issues, proof, and variance.
- 42. Evidence.
 - 42.1. — In general.
- 43. — Presumptions and burden of proof.
- 44. — Admissibility.
- 45. — Weight and sufficiency.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Contracts to convey land.
 - (4). Deeds.
 - 4.1. — In general.
 - (5). — Property conveyed.
 - (6). — Estate or interest created or conveyed.
 - (7). — Covenants, conditions, restrictions, and reservations.
 - (8). Mortgages and notes.
 - (9). Leases.
 - (10). Trusts.
 - (11). Antenuptial contracts.
 - (12). Partnership agreement.
 - (13). Bonds.
 - (15). Sales.
 - (16). Guaranty.
 - (17). Subscription papers.
 - (18). Releases, receipts, and settlements.
 - (19). Lapse of time as affecting sufficiency of proof.
- 46. Trial or hearing.
- 47. Relief awarded.
- 48. Judgment or decree and enforcement thereof.
- 49. Appeal.
- 50. Costs.
- 51. Effect of reformation.

330. REGISTERS OF DEEDS**SUBJECTS INCLUDED**

Public officers authorized to keep records of instruments in writing

332. RELIGIOUS SOCIETIES

Their appointment, qualification and tenure of office, and their rights, powers, duties, and liabilities in general

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Recording of instruments and effect thereof, see RECORDS

1. Nature and creation of office.
2. Appointment, election, qualification, and tenure.
- 2.5. Deputies and assistants.
3. Compensation and fees.
4. Powers and functions.
5. Duties and performance thereof in general.
6. Liabilities for negligence or misconduct.
7. Liabilities on official bonds.

332. RELIGIOUS SOCIETIES

SUBJECTS INCLUDED

Bodies, incorporated or unincorporated, formed for purposes of religious worship, instruction, etc.

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Charitable societies, see CHARITIES

Corporations or unincorporated associations in general, matters relating to, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Taxation and exemption therefrom, see TAXATION

1. Nature and status in general.
2. Constitutional provisions.
3. Statutory provisions.
4. Incorporation and organization.
5. Constitutions and rules.
6. Public aid.
7. Membership in general.
8. Meetings and elections.
9. Officers and committees of church or society.

10. Powers of church or society in general.
11. Superior, associated, or representative bodies and officers.
12. Ecclesiastical tribunals.
 - (.5). In general.
 - (1). Organization and qualifications.
 - (2). Authority and jurisdiction.
 - (3). Limitations.
 - (4). Trial, hearing, or examination of charges.
 - (5). Operation and effect of decisions, laws, and proceedings.
13. Legislative regulation.
14. Judicial supervision in general.
15. Property and funds.
 - 15.1. — In general.
 - 15.2. — Assessment and collection.
16. — Capacity to acquire and hold.
17. — Mode of acquiring.
18. — Title and rights acquired and control and use of property or fund.
19. — Mortgage or pledge.
20. — Sale and conveyance.
21. — Diversion.
22. — Effect of change of doctrine or discipline.
23. — Effect of division of church or society.
 - (1). In general.
 - (2). What constitutes schism or division, and effect thereof in general.
 - (3). Control, use, and title to property on division.
 - (4). Division or partition of property.
24. — Jurisdiction of courts to determine rights of property.
25. — Actions to determine rights to property and funds; injunction.
26. Pews.
27. Ministers.
 - (.5). In general.
 - (1). Ordination, call, employment, or settlement.
 - (2). Termination of office or relation.
 - (3). Action to determine or enforce right to office; injunction.
 - (4). Authority, rights, and privileges.
 - (5). Compensation and collection thereof.

332. RELIGIOUS SOCIETIES

- 28. Religious services and ordinances.
- 29. Contracts and indebtedness.
- 30. Torts.
- 31. Actions by or against societies.
 - (.5). In general.
 - (1). Rights of action and defenses; persons entitled to sue; standing.
 - (2). Capacity to sue and be sued.
 - (3). Parties.
 - (3.5). Process and appearance.
 - (4). Pleadings.
 - (5). Evidence.
 - (6). Trial.
 - (7). Judgment and enforcement.
 - (8). Costs.
- 32. Insolvency and receivers.
- 33. Reorganization.
- 34. Consolidation.
- 35. Dissolution.

334. REMOVAL OF CASES

SUBJECTS INCLUDED

- Transfer of cases brought in state courts to courts of the United States
- Nature and scope of power to require such transfers in general
- Constitutional and statutory provisions relating thereto
- Grounds for such transfers
- Jurisdiction to make and proceedings to obtain removal of cases
- Effect of removal
- Remand of or proceedings in case after removal

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Change of venue or place of trial, see VENUE, CRIMINAL LAW, COURTS and FEDERAL COURTS
- Removal of cases from one court to another court of a state, or from one United States

court to another, see COURTS and FEDERAL COURTS

- I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL, ¶1-17.
- II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY, ¶18-25.
- III. CITIZENSHIP OR ALIENAGE OF PARTIES, ¶26-47.
- IIIA. SEPARATE AND INDEPENDENT CLAIMS; SEPARABLE CONTROVERSIES, ¶48-61.
- IV. PREJUDICE, LOCAL INFLUENCE, OR DENIAL OF CIVIL RIGHTS, ¶62-70.
- V. AMOUNT OR VALUE IN CONTROVERSY, ¶71-76.
- VI. PROCEEDINGS TO PROCURE AND EFFECT OF REMOVAL, ¶76.5-99.
- VII. REMAND OR DISMISSAL OF CASE, ¶100-110.
- VIII. PROCEEDINGS IN CASE AFTER REMOVAL, ¶111-120.

I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL.

- 1. Nature and source of jurisdiction.
- 2. Constitutional and statutory provisions.
- 3. Restrictions by federal or state statutes.
- 4. Suits at law or in equity.
- 5. Actions or proceedings ancillary or supplementary to suit in state court.
- 6. Actions to restrain proceedings in state court.
- 7. Actions to review or set aside judgment of state court.
- 8. Existence of actual controversy.
- 9. Courts from which suits may be removed.
- 10. Jurisdiction of state court.
- 11. Original jurisdiction of United States court.
- 12. Restrictions as to district in which suit might have been brought.
- 13. Conflicting jurisdiction of state and United States courts.
- 14. Court to which case may be removed.
- 15. Condition of case.
- 16. Nature of right of removal.
- 17. Waiver of right.

334. REMOVAL OF CASES

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY.	III. CITIZENSHIP OR ALIENAGE OF PARTIES.(Cont'd)
<ul style="list-style-type: none"> 18. Cases arising under Constitution of United States. 19. Cases arising under laws of United States. <ul style="list-style-type: none"> (1). In general. (2). Cases under laws relating to public lands. (3). Cases under laws relating to mines and mining rights. (4). Actions relating to public roads. (5). Cases under laws relating to navigation and commerce. (6). Cases under patent laws. (7). Cases under laws relating to national banks. (8). Actions by or against United States corporations in general. (9). Actions by or against receivers appointed by United States courts. (10). Cases under revenue laws. 20. Actions against national banks or receivers thereof. 21. Actions against or for acts of United States officers. 22. Criminal prosecutions against United States officers or persons acting under or by authority of such officers. 23. Nature of controversy. 24. Removal of part of case or by one or more coparties. 25. Allegations in pleadings. <ul style="list-style-type: none"> (1). In general. (2). Cases under laws relating to public lands. (3). Cases under laws relating to national banks. (4). Actions by or against United States corporations in general. (5). Actions by or against receivers appointed by United States courts. 	<ul style="list-style-type: none"> 32. Parties in representative or fiduciary capacity, and legal or equitable interests. 33. Assignees. 34. — In general. 35. — Transfers for purpose of or to prevent removal. 36. Improper or collusive joinder of parties. 37. Rearrangement of parties. 38. Interveners and substituted parties. 39. Dismissal as to one or more coparties. 40. Controversies between citizens of same state claiming lands under grants of different states. 41. Controversies between a state or citizens thereof and foreign states, citizens, or subjects. 42. Nature of controversy. 43. Time of existence of ground of removal. 44. Parties entitled to remove in general. 45. Residence of party removing case. 46. Removal by one or more coparties. 47. Allegations in pleadings.
III. CITIZENSHIP OR ALIENAGE OF PARTIES.	IIIA. SEPARATE AND INDEPENDENT CLAIMS; SEPARABLE CONTROVERSIES.
<ul style="list-style-type: none"> 26. Citizenship of parties in general. 27. Citizenship or residence of corporations. 28. Diversity of citizenship of coplaintiffs and codefendants. 29. — In general. 30. — Nominal or formal parties. 31. — Necessary and unnecessary parties. 	<ul style="list-style-type: none"> 48. Removability in general. 48.1. Claims separate and independent in general. 48.2. Controversies separable in general. 48.3. Effect of state laws. 49. Joint and several suits in general. 49.1. Particular suits or proceedings. <ul style="list-style-type: none"> (1). In general. (2). Contracts. (3). — In general. (4). — Insurance. (5). Torts. (6). — In general. (7). — Negligence. (8). — Concurrent negligence. 49.7. Persons in particular relations, suits against. <ul style="list-style-type: none"> (1). In general. (2). Insured and insurer. (3). Employer and employee. (4). Principal and agent. (5). Principal and surety. 50. Liabilities on different grounds.

334. REMOVAL OF CASES**IIIA. SEPARATE AND INDEPENDENT CLAIMS;
SEPARABLE CONTROVERSIES.(Cont'd)**

- 51. Principal and subordinate or incidental controversies or issues.
- 52. Separate interests or claims in subject-matter or part thereof.
- 54. Separate relief against different defendants.
- 55. Separate defenses.
- 56. Set-offs, counterclaims, and cross actions; third party claims.
- 57. Determination of controversy without all parties.
- 58. Removal of whole suit.
- 59. Parties entitled to remove.
- 61. Allegations in pleadings.
 - (1). In general.
 - (2). Plaintiff's pleading as determinative.

**IV. PREJUDICE, LOCAL INFLUENCE,
OR DENIAL OF CIVIL RIGHTS.**

- 62. Nature of prejudice or influence.
- 63. Existence and evidence of prejudice or local influence.
- 64. Remedy by removal to other state court.
- 65. Parties affected by prejudice or local influence.
- 66. Citizenship of parties.
- 67. — In general.
- 68. — Diversity of citizenship.
- 69. Parties entitled to remove for prejudice or local influence.
- 70. Denial of civil rights.

V. AMOUNT OR VALUE IN CONTROVERSY.

- 71. Cases subject to pecuniary limitation.
- 72. Requisite amount or value.
- 73. Matter in dispute.
- 74. Amount or value claimed or involved.
- 75. Allegations and prayers in pleadings.
- 76. Increase or reduction by amendment.

**VI. PROCEEDINGS TO PROCURE
AND EFFECT OF REMOVAL.**

- 76.5. In general.
- 77. Parties to case for purpose of removal.
- 78. Time for taking proceedings.
- 79. — In general.
 - (1). In general.

**VI. PROCEEDINGS TO PROCURE AND
EFFECT OF REMOVAL.(Cont'd)**

- (2). Removal at or before time to answer or plead.
- (2.1). — In general.
- (3). — What constitutes an answer or plea.
- (4). — Time to plead in abatement or other dilatory plea.
- (5). — Time to demur.
- (6). — Extension of time to answer or plead.
- (7). — Effect of amendment of declaration or complaint.
- (8). — Effect of demurrer, plea in abatement, or other dilatory plea.
- (9). — Pleading in criminal cause.
- (10). Removal before or at term at which case could be tried and before trial.
- (11). Removal before trial or final hearing.
- 80. — On ground of prejudice or local influence.
- 81. — Effect of delay, and waiver of objections.
- 82. Parties to notice or petition.
- 83. Notice.
- 84. — In general; service on adverse party and filing in state court.
- 85. — Removal on ground of prejudice or local influence.
- 85.5. Certiorari or habeas corpus for removal of cases.
- 86. Notice or petition.
 - (1). In general.
 - (2). Citizenship or residence of parties in general.
 - (3). Citizenship or residence of corporations.
 - (4). Citizenship or residence at time of bringing suit.
 - (5). Separable controversies.
 - (6). Amount in controversy.
 - (7). Time of removal.
 - (8). District to which removal is sought.
 - (9). Signature and verification.

335. REPLEVIN**VI. PROCEEDINGS TO PROCURE AND EFFECT OF REMOVAL.(Cont'd)**

- (10). Counter affidavits, answer, or reply.
- 87. Petition, affidavits, and other proof of prejudice or local influence.
- 88. Bond.
- 89. Filing notice or petition and bond and effect thereof.
 - (1). In general.
 - (2). Proceedings on filing petition and bond.
 - (3). Review.
- 90. Order for removal.
- 91. Determination by United States court as to removal on ground of prejudice or local influence.
- 92. Filing copy of record in United States court.
- 93. Motion to docket case in United States court.
- 94. Defects in proceedings, objections, amendments, and waiver.
- 95. Transfer of jurisdiction and effect of removal in general.
- 96. Proceedings in state court after removal.
- 96.1. — In general.
- 97. — Validity and effect in general.
- 99. Unauthorized or improper removal.

VII. REMAND OR DISMISSAL OF CASE.

- 100. Power and duty to remand.
- 101. Grounds for remand.
- 101.1. — In general.
- 102. — Want of jurisdiction or of cause for removal.
- 103. — Defects in proceedings for removal.
- 104. — Separate determination as to parties not affected by prejudice or local influence.
- 105. Parties entitled to remand.
- 106. Waiver of right to remand.
- 107. Proceedings for remand and review thereof.
 - (.5). In general.
 - (1). Time for making motion to remand.
 - (2). Sufficiency of motion for remand.
 - (3). Pleading to jurisdiction or in abatement.

VII. REMAND OR DISMISSAL OF CASE.(Cont'd)

- (4). Hearing and scope of inquiry.
- (5). Effect of record of case and proceedings for removal.
- (6). Amendment of record or of petition for removal to prevent remand.
- (7). Evidence.
- (8). Order for remand.
- (9). Review.
- (10). Remand on appeal or writ of error.
- (11). Costs on remand.
- 108. Dismissal of case.
- 109. Jurisdiction of and proceedings in state court after remand, or dismissal.
- 110. Removal after remand.

VIII. PROCEEDINGS IN CASE AFTER REMOVAL.

- 111. Jurisdiction acquired by United States court in general.
- 112. Removal as waiver of objections to jurisdiction or service of process of state court.
- 113. Exercise of jurisdiction before term at which copy of record is to be filed.
- 114. Effect of proceedings in state court before removal.
- 115. Forms and rules of procedure in general.
- 116. Legal and equitable remedies and proceedings.
- 117. Time to plead and for further proceedings.
- 118. Amendment of pleading and process, and replying.
- 119. Trial, judgment, and review.
- 120. Costs.

335. REPLEVIN**SUBJECTS INCLUDED**

Actions for recovery of specific personal property by immediate delivery thereof, founded on right of possession

335. REPLEVIN

More particularly, writs of replevin and statutory actions of claim and delivery, actions to recover chattels, bail trover, etc.

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein

Alternative or incidental recovery of damages

Verdict and judgment and enforcement thereof, and costs in such actions

Liabilities on and enforcement of securities given in such actions

Liability for wrongful replevin

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Damages, merely, for injuring, taking, converting or detaining personal property, actions for, see TRESPASS, CONVERSION AND CIVIL THEFT, BAILMENT

Property right, actions founded on, see DETINUE

Summary proceedings to determine and restore previous possession, see POSSESSORY WARRANT

I. RIGHT OF ACTION AND DEFENSES,
 ⌋1–16.

II. JURISDICTION, ⌋17–18.

III. VENUE, ⌋19.

IV. TIME TO SUE, ⌋20.

V. PARTIES, ⌋21–24.

**VI. PROCEEDINGS FOR TAKING AND
REDELIVERY OF PROPERTY,**
 ⌋25–54.

VII. PLEADING, ⌋55–69.

VIII. EVIDENCE, ⌋70–72.

IX. DAMAGES, ⌋73–84.

X. TRIAL, ⌋85–98.

XI. JUDGMENT, ⌋99–115.

XII. REVIEW, ⌋116.

XIII. COSTS, ⌋117.

XIV. LIABILITIES ON BONDS OR UNDERTAKINGS, ⌋118–135.

I. RIGHT OF ACTION AND DEFENSES.

1. Nature and scope of remedy.
2. Statutory provisions and remedies.
3. Property subject to replevin.
4. — In general.

**I. RIGHT OF ACTION AND
DEFENSES.(Cont'd)**

5. — Property taken under execution, attachment, or other process.
6. — Property distrained or impounded.
8. Title and right to possession of plaintiff.
 - (1). In general.
 - (2). Title to property.
 - (3). Right to possession and prior possession.
 - (4). Title and right to immediate possession.
 - (5). Title and right to possession of particular classes of persons.
9. Taking or detention by defendant.
10. Possession of defendant.
- 10.5. Conditions precedent in general.
11. Demand.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Claim of title and right to possession by defendant and denial of plaintiff's claim.
 - (3). Property wrongfully taken by or in possession of defendant.
 - (4). Requisites and sufficiency of demand.
 - (5). Waiver of demand.
12. Defenses.
 - (1). In general.
 - (2). Set-off and counterclaim.
13. Successive replevins.
14. Cross-replevin.
15. Persons entitled to sue.
16. Persons against whom replevin may be brought.

II. JURISDICTION.

17. Jurisdiction of subject-matter.
18. Jurisdiction of the person.

III. VENUE.

19. In general.

IV. TIME TO SUE.

20. In general.
 See also LIMITATION OF ACTIONS.

V. PARTIES.

21. Parties plaintiff.

335. REPLEVIN**V. PARTIES.**(Cont'd)

- 22. Parties defendant.
- 23. Intervention.
- 24. Substitution of parties.

VI. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY.

- 25. Mode and course of proceeding in general.
- 26. Affidavit.
- 26.1. — In general.
- 27. — Necessity and purpose.
- 28. — Requisites and sufficiency in general.
- 29. — Averments as to title and right to possession.
- 30. — Description and value of property.
- 31. — Averments as to cause of detention.
- 32. — Defects, objections, and amendment.
- 33. Replevin bond or undertaking.
 - (1). In general.
 - (2). Defects, objections, and amendment.
- 33.5. Requisition to officer.
- 34. Writ.
- 34.1. — In general.
- 35. — Issuance.
- 36. — Requisites and sufficiency in general.
- 37. — Description and value of property.
- 38. — Defects, objections, and amendment.
- 39. Order of replevin.
- 40. Taking property under requisition, writ, or order.
- 41. Service of requisition, writ, or order, and accompanying papers.
- 42. Service of summons or other process in action.
- 43. Appraisement of property.
- 44. Custody and care of property.
- 45. Delivery of property to plaintiff.
- 46. Rights and liabilities of plaintiff in possession of property.
- 47. Proceedings for redelivery of property to defendant.
- 48. — In general.
- 49. — Bonds or undertakings.
- 50. — Redelivery and effect.

VI. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY.(Cont'd)

- 51. Quashing or vacating requisition, writ, or order.
- 52. Claims of third persons.
- 53. Return of requisition, writ, or order.
- 54. Effect of failure to replevy property.

VII. PLEADING.

- 55. Mode and form of pleading in general.
- 56. Declaration, complaint, or petition.
- 56.1. — In general.
- 57. — Form and requisites in general.
- 58. — Title and right to possession of plaintiff.
- 59. — Description and value of property.
- 60. — Taking and detention by defendant.
- 61. — Demand.
- 62. — Damages.
- 63. Plea, answer, or affidavit of defense, in general.
- 64. Avowry or cognizance and plea thereto.
- 65. Cross-complaint and answer thereto.
- 66. Replication or reply.
- 67. Demurrer.
- 68. Amended and supplemental pleadings.
- 69. Issues, proof, and variance.
 - (.5). In general.
 - (1). Scope of issues.
 - (2). Matters to be proved and failure of proof.
 - (3). Matters admissible under pleadings in general.
 - (4). Matters admissible under general issue or general denial.
 - (5). Variance.

VIII. EVIDENCE.

- 70. Presumptions and burden of proof.
- 71. Admissibility of evidence.
 - (1). In general.
 - (2). Title and right to possession.
- 72. Weight and sufficiency of evidence.

IX. DAMAGES.

- 73. Nature and form of remedy for damages.
- 74. Elements and measure of compensation.
- 75. — In general.
- 76. — Detention of property.

335. REPLEVIN**IX. DAMAGES.**(Cont'd)

- 77. — Injury to property.
- 78. — Depreciation in value of property.
- 79. — Interest.
- 80. — Costs and expenses of litigation.
- 81. Exemplary damages.
- 82. Amount awarded.
- 83. Damages to defendant in general, and wrongful replevin.
- 84. Reimbursement of defendant for expenditures.

X. TRIAL.

- 85. Dismissal or nonsuit before trial.
- 86. Scope of inquiry and powers of court.
- 87. Mode and conduct of trial.
- 88. Questions for jury in general.
- 89. Dismissal or nonsuit at trial.
- 90. Direction of verdict.
- 91. Instructions.
- 92. Verdict and findings.
- 92.1. — In general.
- 93. — Requisites and sufficiency in general.
- 94. — Partial recovery.
- 95. — Description of property.
- 96. — Value of property.
- 97. — Damages.
- 98. New trial.

XI. JUDGMENT.

- 99. In general.
- 100. Form and requisites in general.
 - (1). In general.
 - (2). Amendment.
- 101. By default.
- 102. Partial recovery.
- 103. For defendant.
 - (1). In general.
 - (2). Return of property.
 - (3). Recovery of value of property.
 - (4). Alternative judgment.
- 104. Description of property.
- 105. Award of possession or return of property.
- 106. Recovery of value of property.
- 107. Alternative judgment.
- 108. Damages.
- 109. Operation and effect.

XI. JUDGMENT.(Cont'd)

- 110. Performance of judgment for return of property.
- 111. Execution and enforcement of judgment.
- 112. — In general.
- 113. — Delivery of possession of property.
- 114. — Making amount awarded for value or damages.
- 115. Effect on title to property of satisfaction of judgment for value or damages.

XII. REVIEW.

- 116. In general.

XIII. COSTS.

- 117. In general.

XIV. LIABILITIES ON BONDS OR UNDERTAKINGS.

- 118. Accrual or release of liability by breach or fulfillment of conditions.
- 118.1. — In general.
- 119. — Replevin bonds or undertakings.
- 120. — Redelivery bonds or undertakings.
- 121. — Appeal bonds or undertakings.
- 122. Rights and remedies of sureties.
- 123. Discharge of sureties.
- 124. Extent of liability.
 - (1). In general.
 - (2). Costs, attorney fees, and expenses.
 - (3). Measure or amount of damages in general.
 - (4). Mitigation or reduction of damages.
- 125. Enforcement in replevin proceeding.
- 126. Summary remedies.
- 127. Actions.
 - 127.1. — In general.
- 128. — Right of action.
- 129. — Conditions precedent.
- 130. — Defenses.
- 131. — Jurisdiction and venue.
- 132. — Parties.
- 133. — Pleading.
- 134. — Evidence.
- 135. — Trial, judgment, and review.

336H. RES JUDICATA**336. REPORTS****SUBJECTS INCLUDED**

Publications of judicial decisions for general circulation

Right to publish or control publication of such decisions in general

Constitutional and statutory provisions relating to such publication

Public officers charged with the preparation and publication of such reports, and their rights, powers, and duties

Contracts for the publication and sale of such reports, and rights and liabilities arising therefrom

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Opinions, rendition and effect as precedent, see **COURTS**

Referees, masters, commissioners, auditors, etc., reports of, see **REFERENCE, EQUITY**

Stenographers' reports of judicial proceedings, see **COURTS, APPEAL AND ERROR, CRIMINAL LAW**, and other specific topics

1. Right to publish or to control publication.
2. Constitutional and statutory provisions.
3. Reporters.
- 3.5. Printing and publication by public authorities.
4. Contracts for printing and publication.
5. Distribution of copies.
6. Sale of copies.

336H. RES JUDICATA**SUBJECTS INCLUDED**

Preclusiveness of judgments and other determinations made in judicial proceedings

More particularly, the nature, elements, and operation of the doctrines of—

Res judicata

Merger and bar

Collateral estoppel

Estoppel by judgment

Estoppel by verdict

Claim preclusion

Issue preclusion

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Collateral attack on judgments, see **JUDGMENT XI**

Compromise, settlement, and release, effect of, see **COMPROMISE, SETTLEMENT, AND RELEASE III**

Construction and operation of judgments in general, see **JUDGMENT XII**

Enforcement of judgments, see **JUDGMENT XIX, CREDITORS' REMEDIES**

Equitable estoppel, see **ESTOPPEL III**

Federal Tort Claims Act judgment bar, see **UNITED STATES** ¶1424, 1463

Judicial estoppel, see **ESTOPPEL** ¶68

Law of the case doctrine, see **COURTS** ¶99

Particular determinations, preclusiveness of—

Accounting, determinations made in proceedings for, see **ACCOUNT** ¶24 and other specific topics

Administrative agencies, determinations made by, see **ADMINISTRATIVE LAW AND PROCEDURE** ¶1455 and other specific topics

Admiralty, judgment in libel against boat, see **ADMIRALTY** ¶95

Adoption proceedings, determinations made in, see **ADOPTION** ¶307

Arbitration awards, see **ALTERNATIVE DISPUTE RESOLUTION** ¶380–387

Attorney discipline proceedings, determinations made in, see **ATTORNEYS AND LEGAL SERVICES** ¶1098

Bankruptcy plans, confirmation of, see **BANKRUPTCY** ¶3568(2), 3683.1, 3715(10)

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1. In general.

2. Preclusion in general.

3. — In general.

4. — Claim preclusion in general.

5. Merger and bar in general.

6. Collateral estoppel and issue preclusion in general.

7. Miscellaneous particular cases, operation of doctrines in.

8. — In general.

9. — Res judicata and claim preclusion.

10. — Collateral estoppel and issue preclusion.

11. Purpose or function of doctrines.

12. Equitable nature of doctrines; fairness.

13. Mandatory or discretionary nature of doctrines.

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15. Resolution of doubt as to application of doctrines.

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17. — In general.

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19. Public policy considerations; public interest.

20. Constitutional, statutory, and regulatory provisions.

21. What law governs.

22. Federal preemption.

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31. In general.
32. Courts, judicial proceedings, and actions in general.
33. — In general.
34. — Jurisdiction in personam or in rem.
35. — Effect of prior judicial determinations on subsequent administrative proceedings.
36. Exclusive, concurrent, or conflicting jurisdiction.
37. Special, limited, or inferior jurisdiction.
38. Probate courts and jurisdiction.
39. Law or equity.
40. Civil or criminal.
41. — In general.
42. — Effect of prior civil determinations on subsequent criminal proceedings.
43. — Effect of prior criminal determinations on subsequent civil proceedings.
44. Proceedings for particular or extraordinary relief.
45. — In general.
46. — Declaratory or injunctive relief.
47. — Mandamus or prohibition.
48. — Interpleader.
49. Summary proceedings.
50. Other particular tribunals, sources of jurisdiction, and proceedings.
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62. Nature, rendition, and form of determination in general.
63. Judgment in general.
64. — In general.
65. — Necessity of judgment.
66. — Nature, rendition, and form.
67. Determination on merits.
68. — In general.
69. — Necessity of determination on merits.
70. — Judgment on merits.
71. Validity of determination.
72. — In general.
73. — Valid judgment in general.

III. DETERMINATIONS HAVING PRECLUSIVE EFFECT.(Cont'd)

74. — Valid determination on merits.
 - (1). In general.
 - (2). Valid judgment on merits.
75. — Erroneous, irregular, or voidable determination.
 - (1). In general.
 - (2). Irregularity of proceedings.
76. — Void determination.
77. — Effect of fraud in obtaining determination.
78. — Effect of lack of jurisdiction.
79. Finality of determination.
80. — In general.
81. — Final judgment in general.
 - (1). In general.
 - (2). Valid and final judgment.
82. — Final determination on merits.
 - (1). In general.
 - (2). Final judgment on merits.
83. — Valid and final determination on merits.
 - (1). In general.
 - (2). Valid and final judgment on merits.
84. Interlocutory determinations.
85. Determinations with or without prejudice.
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88. Alternative determinations or holdings.
89. Dicta.
90. Unanimity of tribunal making determination.
91. Publication of determination.
92. Multiple or inconsistent determinations.

(B) SUBJECT, MODE, AND BASIS OF DETERMINATION.

101. In general.
102. Particular determinations.
103. — In general.
104. — Motions and orders in general.
105. — Dismissal or nonsuit in general.
106. — Voluntary dismissal or nonsuit.
107. — Involuntary dismissal or nonsuit.
108. — Demurrer or exceptions.
109. — Judgment on pleadings.

336H. RES JUDICATA**III. DETERMINATIONS HAVING PRECLUSIVE EFFECT.(Cont'd)**

- 110. — Judgment after trial.
- 111. — Judgment as matter of law.
 - (1). In general.
 - (2). Directed verdict.
 - (3). Judgment notwithstanding verdict (JNOV).
- 112. — Summary disposition.
 - (1). In general.
 - (2). Summary judgment.
- 113. — Verdict, findings, or conclusions.
- 114. — Dismissal after verdict or judgment.
- 115. — Dismissal after appeal.
- 116. Particular grounds or defects, determinations premised on.
- 117. — In general.
- 118. — Failure to perform condition precedent.
- 119. — Lack of jurisdiction.
- 120. — Untimeliness; limitations and laches.
- 121. — Prematurity; lack of ripeness.
- 122. — Mootness.
- 123. — Defects in parties.
- 124. — Defects in pleading.
 - (1). In general.
 - (2). Failure to state claim.
- 125. — Failure to prosecute; discontinuance.
- 126. — Default.
- 127. — Abatement, stay, or continuance.
- 128. Preliminary, procedural, and collateral matters, determinations concerning.
- 129. Evidentiary matters, determinations concerning.
- 130. — In general.
- 131. — Admission or exclusion of evidence.
- 132. Remedial matters, determinations concerning.
- 133. — In general.
- 134. — Monetary relief; damages.
- 135. — Declaratory or injunctive relief.
- 136. — Other forms of particular or extraordinary relief.
- 137. Consent or agreement, determinations premised on.
- 138. Confession of judgment.

III. DETERMINATIONS HAVING PRECLUSIVE EFFECT.(Cont'd)

- 139. Cognovit.
- 140. Retraxit.

(C) EFFECT OF UNRESOLVED MATTERS.

- 151. In general.
- 152. Effect of pending proceedings.
- 153. — In general.
- 154. — Motion for new trial.
- 155. — Proceedings for relief from determination.
- 156. — Proceedings on appeal or other review.
- 157. Unresolved claims or causes of action.
- 158. Determinations involving fewer than all defendants.

(D) EFFECT OF SUBSEQUENT EVENTS.

- 161. In general.
- 162. Determinations made on appeal or other review.
- 163. — In general.
- 164. — Denial of appeal or review.
- 165. — Dismissal of appeal.
- 166. — Affirmance.
- 167. — Remand.
- 168. — Determinations made on judicial review of administrative decisions.
- 169. Vacation or reversal of determination.
- 170. Grant or denial of new trial.
- 171. Dismissal after vacation, reversal, or grant of new trial.

(E) CRIMINAL DETERMINATIONS.**1. IN GENERAL.**

- 181. In general.
- 182. Nature, rendition, and form of determination in general.
- 183. Validity of determination.
- 184. Finality of determination.
- 185. Interlocutory determinations.

2. SUBJECT, MODE, AND BASIS OF DETERMINATION.

- 191. In general.
- 192. Particular determinations.
- 193. — In general.
- 194. — Verdict and findings in general.

336H. RES JUDICATA**III. DETERMINATIONS HAVING PRECLUSIVE EFFECT.(Cont'd)**

- 195. — Verdict of guilty; conviction in general.
- 196. — Plea of guilty.
- 197. — Plea of no contest or nolo contendere.
- 198. — Dismissal, nolle prosequi, or discontinuance.
- 199. — Abatement.
- 200. — Verdict of not guilty; acquittal.
- 201. — Dismissal after appeal.
- 202. Preliminary, procedural, and collateral matters, determinations concerning.
- 203. Evidentiary matters, determinations concerning.
- 204. — In general.
- 205. — Admission, exclusion, or suppression of evidence.
- 206. Sentencing and punishment, determinations concerning.
- 207. Postconviction proceedings and relief, determinations concerning.
- 208. Consent or agreement, determinations premised on.
- 209. — In general.
- 210. — Plea agreements.

3. EFFECT OF UNRESOLVED MATTERS AND SUBSEQUENT EVENTS.

- 221. In general.
- 222. Effect of pending proceedings.
- 223. — In general.
- 224. — Motion for new trial.
- 225. — Proceedings for relief from determination.
- 226. — Proceedings on appeal or other review.
- 227. Determinations made on appeal or other review.
- 228. Vacation or reversal of determination.
- 229. Grant or denial of new trial.
- 230. Dismissal after vacation, reversal, or grant of new trial.

IV. MATTERS PRECLUDED; SCOPE OF PRIOR AND SUBSEQUENT LITIGATION.**(A) IN GENERAL.**

- 251. In general.

IV. MATTERS PRECLUDED; SCOPE OF PRIOR AND SUBSEQUENT LITIGATION.(Cont'd)

- 252. Matters at issue in general.
- 253. Claims or causes of action in general.
- 254. — In general.
- 255. — Creation of new liability by judgment; merger or bar.
- 256. Issues or questions in general.
- 257. — In general.
- 258. — Jurisdictional issues.
- 259. — Evidentiary issues.
- 260. — Questions of law or fact.
- 261. Theories or grounds of recovery in general.
- 262. Demands, remedies, and relief.
- 263. — In general.
- 264. — Election of remedies.
- 265. — Satisfaction.
- 266. Defenses.
- 267. Set-off or counterclaim.
- 268. Matters actually litigated or determined.
- 269. — In general.
- 270. — Claims or causes of action.
- 271. — Issues or questions.
- 272. — Theories or grounds of recovery.
- 273. — Demands, remedies, and relief.
- 274. — Defenses.
- 275. — Set-off or counterclaim.
- 276. Matters necessarily or specifically determined.
- 277. — In general.
- 278. — Essential or critical matters.
- 279. — Incidental or collateral matters.
- 280. — Facts necessary to sustain determination.
- 281. — Inferences from determination.
- 282. Matters determined on appeal.
- 283. Matters which could have been litigated or determined.
- 284. — In general.
- 285. — Claims or causes of action in general.
- 286. — Issues or questions in general.
- 287. — Theories or grounds of recovery in general.
- 288. — Opportunity to litigate.
 - (1). In general.
 - (2). Full and fair opportunity.

336H. RES JUDICATA**IV. MATTERS PRECLUDED; SCOPE
OF PRIOR AND SUBSEQUENT
LITIGATION.(Cont'd)**

- 289. — Availability of appellate or other review.
- 290. — Incentive to litigate.
- 291. — Practicality or impracticality of litigation.
- 292. — Prevention or prohibition of litigation.
- 293. — Demands, remedies, and relief.
- 294. — Defenses.
- 295. — Set-off or counterclaim.
- 296. Matters not determined.
- 297. Matters not litigated or put at issue.
- 298. — In general.
- 299. — Matters determined but not litigated or put at issue.
- 300. Matters encompassed by pleadings.
- 301. Matters encompassed by evidence.
- 302. — In general.
- 303. — Effect of admission or exclusion.
- 304. Matters encompassed by verdicts, findings, and conclusions.
- 305. Matters conceded or assumed.
- 306. Matters withheld or withdrawn.

**(B) IDENTITY OR DIVERSITY OF
MATTERS INVOLVED.**

- 311. In general.
- 312. Claims or causes of action in general.
- 313. — In general.
- 314. — Necessity of identity.
- 315. — Defense in prior proceedings as claim or cause of action in subsequent proceedings.
- 316. Issues or questions in general.
- 317. — In general.
- 318. — Necessity of identity.
- 319. Subject matter in general.
- 320. — In general.
- 321. — Necessity of identity.
- 322. Theories or grounds of recovery.
- 323. — In general.
- 324. — Legal theories or grounds.
- 325. Demands, remedies, and relief.
- 326. Defenses; set-off or counterclaim.
- 327. Events giving rise to proceedings; factual basis.
- 328. — In general.

**IV. MATTERS PRECLUDED; SCOPE
OF PRIOR AND SUBSEQUENT
LITIGATION.(Cont'd)**

- 329. — Act, occurrence, or transaction.
- 330. — Operative facts.
- 331. — Nucleus of facts.
- 332. Evidence; burden and degree of proof.
- 333. — In general.
- 334. — Civil or criminal.
- 335. Splitting claims or causes of action.
- 336. Successive claims or causes of action.
- 337. Entire controversy.
- 338. Ongoing or continuing course of conduct.
- 339. Ongoing or continuing injury.

**(C) INTERVENING CHANGE IN LAW
OR FACTS, EFFECT OF.**

- 351. In general.
- 352. New or subsequent events.
- 353. Newly discovered evidence.
- 354. New injury.

V. PARTICULAR SUBJECTS OF LITIGATION.

- 361. In general.
- 362. Constitutional law, civil rights, and discrimination in general.
- 363. Personal status or relations in general.
- 364. — In general.
- 365. — Convicts; expungement.
- 366. — Family and domestic relations.
- 367. — Protection of endangered persons.
- 368. Property in general.
- 369. — In general.
- 370. — Real property in general.
- 371. — Personal property in general.
- 372. — Adjoining property.
- 373. — Adverse possession.
- 374. — Easements.
- 375. — Ejectment.
- 376. — Forcible entry and detainer.
- 377. — Forfeiture.
- 378. — Partition.
- 379. — Quieting title.
- 380. — Trespass.
- 381. — Trespass to try title.
- 382. Contracts and conveyances in general.
- 383. — In general.
- 384. — Leases; landlord and tenant.

336H. RES JUDICATA**V. PARTICULAR SUBJECTS
OF LITIGATION.(Cont'd)**

- 385. — Sales of real property; vendor and purchaser.
- 386. — Sales of goods.
- 387. Liens and debt in general.
- 388. — In general.
- 389. — Judgment liens and debt.
- 390. — Real property.
- 391. — Accounts and installments.
- 392. Torts and personal injuries in general.
- 393. — In general.
- 394. — Intentional torts.
- 395. — Negligence.
- 396. — Products liability.
- 397. Criminal offenses, proceedings, and liability in general.
- 398. — In general.
- 399. — Particular offenses and prosecutions.
- 400. — Defenses and mitigating circumstances.
- 401. — Sentencing and punishment.
- 402. — Postconviction proceedings and relief.
- 403. Antitrust, trade regulation, and consumer protection.
- 404. Associations and organizations.
- 405. — In general.
- 406. — Corporations and business organizations.
- 407. — Limited liability companies.
- 408. — Partnerships.
- 409. Attorneys and legal services.
- 410. — In general.
- 411. — Professional negligence; malpractice.
- 412. Bankruptcy.
- 413. — In general.
- 414. — Preclusive effect of prior state determinations in general.
- 415. — Stay.
- 416. — Discharge.
- 417. Commercial paper and negotiable instruments.
- 418. Education.
- 419. Election law.
- 420. Environmental law.
- 421. Finance and banking.
- 422. Fraud and racketeering.

**V. PARTICULAR SUBJECTS
OF LITIGATION.(Cont'd)**

- 423. Health.
- 424. — In general.
- 425. — Mental health.
- 426. — Chemical dependents.
- 427. — Sex offenders.
- 428. — Professional negligence; malpractice.
- 429. Indians.
- 430. Intellectual property.
- 431. — In general.
- 432. — Copyrights.
- 433. — Trademarks.
- 434. — Trade secrets.
- 435. — Patents.
- 436. Labor and employment.
- 437. — In general.
- 438. — Public employment.
- 439. — Discrimination.
- 440. Mines and minerals.
- 441. — In general.
- 442. — Oil and gas.
- 443. Mortgages and deeds of trust.
- 444. Nuisance.
- 445. Prisons.
- 446. Searches, seizures, and arrests.
- 447. Secured transactions.
- 448. Securities and commodities.
- 449. Taxation.
- 450. — In general.
- 451. — Preclusive effect of state determinations on federal proceedings.
- 452. Telecommunications.
- 453. Transportation.
- 454. — In general.
- 455. — Motor vehicles.
- 456. Water law.
- 457. Wills, trusts, and estates.

VI. PERSONS AFFECTED BY PRECLUSION.**(A) IN GENERAL.**

- 461. In general.
- 462. Persons who may assert preclusion in general.
- 463. Persons who may be precluded in general.
- 464. Parties and privies in general.
- 465. — In general.

336H. RES JUDICATA**VI. PERSONS AFFECTED BY
PRECLUSION.(Cont'd)**

- 466. — Parties of record.
- 467. — Persons not parties or privies.
- 468. Who are parties.
- 469. — In general.
- 470. — Necessity of service of process.
- 471. — Necessity of appearance.
- 472. Who are privies; what constitutes privi-
ty.
- 473. Identity.
- 474. — In general.
- 475. — Identity of capacity.
- 476. Adversity.
- 477. Criminal offenses, proceedings, and lia-
bility.

(B) PARTICULAR PERSONS AND PARTIES.**1. IN GENERAL.**

- 481. In general.
- 482. Coparties.
- 483. — In general.
- 484. — Coplaintiffs and codefendants.
- 485. — Cross-claimants.
- 486. Necessary and indispensable parties.
- 487. Nominal and unnecessary parties.
- 488. Unknown or unnamed parties.
- 489. Joined or additional parties.
- 490. Intervenor and claimants.
- 491. Dismissed or severed parties.
- 492. Persons participating in, promoting, or
controlling litigation.
- 493. — In general.
- 494. — Witnesses.
- 495. — Amicus curiae.
- 496. Persons submitting interests to adjudica-
tion.
- 497. Real parties in interest.
- 498. Parties to interpleader.

**2. PARTICULAR INTERESTS OF AND RELATIONS
BETWEEN PERSONS.**

- 501. In general.
- 502. Property interests in general.
- 503. Contractual interests and relations in
general.
- 504. Concurrent or successive interests.
- 505. Individual, representative, or official ca-
pacity, parties acting in.

**VI. PERSONS AFFECTED BY
PRECLUSION.(Cont'd)**

- 506. Persons represented by other persons or
parties.
- 507. — In general.
- 508. — Virtual representation.
- 509. — Class actions.
- 510. Joint and several interests, obligations,
or liabilities.
- 511. — In general.
- 512. — Joint tortfeasors and wrongdoers.
- 513. — Joint contractors.
- 514. — Satisfaction by one jointly or sever-
ally liable.
- 515. Persons primarily or secondarily liable.
- 516. — In general.
- 517. — Vicarious liability in general.
- 518. — Contribution and subrogation.
- 519. — Notice of prior litigation and op-
portunity to participate.
- 520. Debtor and creditor.
- 521. — In general.
- 522. — Lender and borrower.
- 523. — Commercial paper and negotiable
instruments.
- 524. — Judgment debt.
- 525. — Insolvency and receivership.
- 526. — Bankruptcy.
- 527. Buyer and seller.
- 528. — In general.
- 529. — Real property; vendor and pur-
chaser.
- 530. — Judicial sales.
- 531. Assignor and assignee.
- 532. Bailor and bailee.
- 533. Landlord and tenant.
- 534. — In general.
- 535. — Cotenants.
- 536. Mortgagor and mortgagee.
- 537. Decedent and estate.
- 538. Trustee and beneficiary.
- 539. Family and domestic relations.
- 540. — In general.
- 541. — Spouses and domestic partners.
(1). In general.
(2). Former spouses or partners.
- 542. — Parent and child.
- 543. Guardian and ward.
- 544. — In general.

336H. RES JUDICATA**VI. PERSONS AFFECTED BY
PRECLUSION.(Cont'd)**

- 545. — Guardian ad litem.
- 546. Principal and agent.
- 547. Employer and employee.
- 548. — In general.
- 549. — Respondeat superior.
- 550. Attorney and client.

**3. ORGANIZATIONS AND PERSONS
RELATED THERETO.**

- 561. In general.
- 562. Associations.
- 563. Corporations and business organizations.
- 564. — In general.
- 565. — Business, trade, and professional associations.
- 566. — Limited liability companies.
- 567. Partnerships.
- 568. Criminal offenses, proceedings, and liability.

**4. PUBLIC ENTITIES AND PERSONS
RELATED THERETO.**

- 571. In general.
- 572. Contractual interests and relations.
- 573. Public officials and employees.
- 574. — In general.
- 575. — Deputies and successors.
- 576. — Individual, representative, or official capacity.
- 577. Citizens and taxpayers.
- 578. Criminal offenses, proceedings, and liability.

(C) MUTUALITY.

- 581. In general.
- 582. Offensive or defensive use of preclusion; shield or sword.
- 583. Particular persons and parties; particular cases.
- 584. Criminal offenses, proceedings, and liability.

**(D) WAIVER OR OTHER LOSS OF RIGHT
TO ASSERT PRECLUSION.**

- 591. In general.
- 592. Persons who may assert waiver or loss of rights.
- 593. Persons whose rights may be waived or lost.

**VI. PERSONS AFFECTED BY
PRECLUSION.(Cont'd)**

- 594. Criminal offenses, proceedings, and liability.

**(E) USE OF DETERMINATION AS EVIDENCE
AGAINST PERSONS NOT BOUND
THEREBY.**

- 601. In general.
- 602. Particular subjects.
- 603. — In general.
- 604. — Property rights in general.
- 605. — Indebtedness.
- 606. — Title or link in chain of title.
- 607. Criminal offenses, proceedings, and liability.

**VII. PROCEEDINGS TO ESTABLISH
PRECLUSION.****(A) IN GENERAL.**

- 611. In general.
- 612. Course and conduct of proceedings in general.

**(B) MANNER OF ASSERTING OR
CONTESTING PRECLUSION.**

- 621. In general.
- 622. Pleading.
- 623. — In general.
- 624. — Answer or other responsive pleading; assertion of preclusion as defense.
 - (1). In general.
 - (2). Res judicata and claim preclusion.
 - (3). Collateral estoppel and issue preclusion.
- 625. — Amended and supplemental pleadings.
- 626. — Relation between pleadings and proof; variance.
- 627. Motion, demurrer, or exception.
- 628. Consent of parties.
- 629. Assertion by court; sua sponte assertion.
- 630. Time for assertion.
- 631. Effect of failure to assert; waiver.

(C) EVIDENCE.

- 641. In general.
- 642. Presumptions, inferences, and burden of proof.
- 643. — In general.

339. REVIEW**VII. PROCEEDINGS TO ESTABLISH
PRECLUSION.(Cont'd)**

- 644. — Res judicata and claim preclusion.
- 645. — Collateral estoppel and issue preclusion.
- 646. Admissibility.
- 647. — In general.
- 648. — Parol or extrinsic evidence.
- 649. Degree of proof.
- 650. Weight and sufficiency.
- 651. — In general.
- 652. — Res judicata and claim preclusion.
- 653. — Collateral estoppel and issue preclusion.

(D) HEARING OR TRIAL.

- 661. In general.
- 662. Questions of law or fact.
- 663. — In general.
- 664. — Res judicata and claim preclusion.
- 665. — Collateral estoppel and issue preclusion.
- 666. Instructions.
- 667. Verdict, findings, and determination.

337. RESCUE**SUBJECTS INCLUDED**

- Delivery of and attempts to deliver prisoners or property from lawful custody of officers or other persons, or from places where such prisoners or property are lawfully confined or held, by force or fraud
- Nature and elements of the crimes of rescue, pound breach, etc.
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

- Escapes by prisoners themselves, see ESCAPE
- Resisting or obstructing execution of process, see OBSTRUCTING JUSTICE

- 1. Nature and elements of offenses.
- 2. Defenses.
- 3. Indictment or information.
- 4. Evidence.
- 5. Trial and review.

339. REVIEW**SUBJECTS INCLUDED**

Review by superior courts of judicial action of inferior tribunals or officers, or of their own decisions, for causes which arise subsequently or otherwise not ground of appeal, etc., or in proceedings not reviewable by appeal, writ of error, etc., or certiorari

Nature and scope of the remedy by writ of review, or action or other independent proceeding for review, in general

In what cases and as to what proceedings such review is allowed

Grounds for, jurisdiction to grant, and proceedings to obtain such review

Requisites, issuance and effect of writs, etc., of review and proceedings thereon

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Equitable grounds, relief against judgments, see JUDGMENT

Equity courts, bills of review in, see EQUITY
Higher courts, review by for errors or irregularities—

By statutory writ of review in the nature of writ of certiorari, see CERTIORARI

On appeal or writ of error, see APPEAL AND ERROR

Judgments, review of—

On grounds of defense or discharge arising subsequently, see AUDITA QUERELA

On motion in courts in which they were rendered, see JUDGMENT

- 1. Nature and scope of remedy.
- 2. Constitutional and statutory provisions.
- 3. Existence of other remedy.

339. REVIEW

4. Recourse to or pendency of other proceeding.
5. Discretion as to grant of writ.
6. Successive writs or proceedings.
7. Decisions reviewable.
8. Grounds for review.
9. Right of review.
10. Form of remedy.
11. Jurisdiction.
12. Presentation of objections and exceptions in original proceeding.
13. Parties.
14. Time of taking proceedings.
15. Proceedings to procure writ of review.
- 15.1. — In general.
16. — Petition or other application.
17. — Bond or other security.
18. — Effect of proceedings in general.
19. — Supersedeas or stay.
20. — Allowance or disallowance of writ.
21. Writ of review or other process, and service.
22. Pleading.
23. Evidence.
24. Scope of review and powers of court.
25. Trial or hearing.
26. Judgment.
27. Execution and enforcement of judgment.
28. Appeal or other proceedings for review of decision.
29. Costs.

340. REWARDS**SUBJECTS INCLUDED**

Offers, by private persons or by the government, of a premium or compensation for a special or extraordinary service, not limited to any particular person or persons

Acceptance of such offers and performance of the services, and rights and liabilities of the parties thereupon

Actions for such rewards

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bounties for enlistment in the public service or engaging in particular industries or performing other acts for the public benefit, see BOUNTIES

Customs laws, rewards under, see CUSTOMS DUTIES

Lost goods, effect on finders' rights of offer of reward for recovery thereof, see ABANDONED AND LOST PROPERTY, II

0.5. Nature and requisites in general.

1. Statutory provisions and rewards.
2. Offer.
- 2.1. — In general.
3. — By private persons.
4. — By public authorities.
5. Performance of service and conditions.
- 5.1. — In general.
7. — Previous knowledge and acceptance of offer.
8. — Sufficiency.
9. Persons who may receive.
10. — In general.
11. — Public officers.
12. Apportionment.
13. Payment.
14. Claims against public authorities and officers.
15. Actions.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial.
 - (5). Finding and judgment.
 - (6). Costs.

341. RIOT**SUBJECTS INCLUDED**

Tumultuous disturbance of the public peace by a number of persons mutually assisting one another in the execution of a common purpose by the use of force

342. ROBBERY

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assemblages of persons for an unlawful purpose which is not carried into execution, see UNLAWFUL ASSEMBLY

Cities' or counties' liabilities for injuries by rioters, see MUNICIPAL CORPORATIONS, COUNTIES

Fighting in a public place, disturbance of the peace by, see CRIMINAL LAW §45.15

Insurrection, see INSURRECTION AND SEDITION

1. Nature and elements of offenses.
2. Defenses.
3. Persons liable.
4. Preliminary proceedings in prosecution.
5. Indictment or information.
6. Evidence.
7. Trial and review.
8. Sentence and punishment.
9. Suppression of riots.

342. ROBBERY**SUBJECTS INCLUDED**

Taking, with intent to steal, personal property in possession of another, from his person or in his presence, against his will, by force or by putting him in fear

Attempts and assaults with intent to commit such offenses

Nature and elements of the crime of robbery and of degrees thereof

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Larceny from the person, without force or intimidation, see LARCENY

Mail robbery, see POSTAL SERVICE

Threats made with intent to obtain money or other property, see EXTORTION

1. Nature and elements in general.
2. Statutory provisions.
3. Intent.
4. Property subject of robbery and ownership and possession thereof.
5. Taking in general.
6. Force.
7. Putting in fear.
8. Taking against will of owner or other in possession.
9. Taking from person or presence of another.
10. Asportation.
11. Degrees; armed robbery.
12. Attempt.
13. Assault with intent to rob.
14. Defenses.
15. Persons liable.
16. Indictment or information.
- 16.1. — In general.
17. — Requisites and sufficiency.
 - (1). In general.
 - (2). Intent.
 - (3). Description of property.
 - (4). Value of property.
 - (5). Ownership and possession of property.
 - (6). Taking and asportation.
 - (7). Force and putting in fear.
18. — Attempt.
19. — Assault with intent to rob.
20. — Issues, proof, and variance.
21. Evidence in general.
22. Presumptions and burden of proof.
23. Admissibility of evidence.
 - (1). In general.
 - (2). Circumstances and condition of person robbed.
 - (3). Possession by accused of weapons, tools, or stolen property.
24. Weight and sufficiency of evidence.
- 24.10. — In general.

342. ROBBERY

- 24.15. — Degree or classification of offense.
 - (1). In general.
 - (2). First degree; armed robbery.
- 24.20. — Participation in offense.
- 24.25. — Effect of possession of stolen property.
- 24.30. — Attempts.
- 24.35. — Intent.
- 24.40. — Identity of accused.
- 24.45. — Description, value and ownership of property.
- 24.50. — Force and putting in fear.
- 24.55. — Assault with intent to rob.
- 25. Trial.
 - 25.1. — In general.
- 26. — Questions for jury.
- 27. — Instructions.
 - (1). In general.
 - (2). Definitions of offense.
 - (3). Intent.
 - (5). Grade or degree of offense.
 - (6). Applicability to issues and evidence.
 - (7). Attempts and assaults with intent to rob.
- 28. — Verdict.
- 30. Sentence and punishment.

343. SALES**SUBJECTS INCLUDED**

- Transfers, whether absolute or conditional, of ownership of personal property for a price, especially where transaction is within the scope of Article 2 of the Uniform Commercial Code
- Contracts for such transfers, and the rights, obligations, and liabilities of the parties thereto
- Warranties, whether express or implied, attendant to such transfers
- Remedies relating to such transfers, contracts, and warranties, and actions thereon
- Rights and liabilities of parties as to third persons, and actions thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Arbitration of disputes under sales contracts, see ALTERNATIVE DISPUTE RESOLUTION
- Assignees for benefit of creditors, receivers, etc., sales, see BANKRUPTCY, CREDITORS' REMEDIES ⚡1172, RECEIVERS, and other specific topics
- Auctions, regulation and conduct of sales by, see AUCTIONS AND AUCTIONEERS
- Bailment, see BAILMENT
- Barter or exchange, transfers by, see PROPERTY VIII(B)
- Bills of sale as security for debt, see CHATTEL MORTGAGES
- Champertous contracts, sales as, see CHAMPERTY AND MAINTENANCE ⚡4(4)
- Chattel mortgages, sales to enforce, see CHATTEL MORTGAGES
- Consignment, bailment for sale, and factorage, see FACTORS
- Fiduciary or representative relations, sales by persons in, see BROKERS, GUARDIAN AND WARD, and other specific topics
- Frauds, statute of, affecting validity of sale, see FRAUDS, STATUTE OF
- Judgments, decrees, and orders of courts, sales under, see JUDICIAL SALES and other specific topics
- Judicial process, sales under, see CREDITORS' REMEDIES and other specific topics
- Leases of personal property, see BAILMENT
- Particular classes of persons, sales by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, HUSBAND AND WIFE, INFANTS, MENTAL HEALTH, and other specific topics
- Particular kinds of property, sales of, especially as to questions not governed by Article 2 of the Uniform Commercial Code—
 - Aircraft, see AVIATION ⚡346
 - Automobiles, see AUTOMOBILES ⚡19
 - Bonds, see BONDS ⚡84, 87
 - Businesses and business assets, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP
 - Commercial paper, see COMMERCIAL PAPER VII(C)

343. SALES

Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY ¶43

Corporate stock and securities, see CORPORATIONS AND BUSINESS ORGANIZATIONS, SECURITIES REGULATION

Electricity, see ELECTRICITY ¶11(3)

Gas, see GAS ¶13(1), 14(2)

Good will, see GOOD WILL ¶4

Impounded animals, see ANIMALS ¶106

Log or lumber sales, see LOGS AND LOGGING ¶34

Minerals, see MINES AND MINERALS ¶92.66, 93.5

Patents, see PATENTS VI(C)

Real property, see REAL PROPERTY CONVEYANCES

Rights of action, see ASSIGNMENTS

Software, see COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107

Tickets, see CARRIERS IV(B), PUBLIC AMUSEMENT AND ENTERTAINMENT ¶68

Trademarks, see TRADEMARKS ¶1197

Vessels, see SHIPPING ¶23

Water, see WATER LAW

Pledges, sales to enforce, see PLEDGES

Powers, sales in execution of, see POWERS

Regulation of sales, see ANTITRUST AND TRADE REGULATION, FOOD, ALCOHOLIC BEVERAGES, and other specific topics

Secured transactions, see SECURED TRANSACTIONS

Speculative transactions and dealings, sales as, see GAMING AND LOTTERIES ¶227

Storage of goods, see BAILMENT, WAREHOUSEMEN

Tax sales, see INTERNAL REVENUE, TAXATION

Tort liability for injuries from defects in goods sold, see PRODUCTS LIABILITY

Transfer of possession of personal property without transfer of ownership, see BAILMENT

Transportation of goods, see CARRIERS

Uniform Commercial Code generally, see STATUTES ¶1320

Uniform Commercial Code, other articles—

Article 2A, see BAILMENT

Article 3, see COMMERCIAL PAPER

Articles 4, 4A, and 5, see FINANCE, BANKING, AND CREDIT IV

Article 6, see FRAUDULENT CONVEYANCES

Article 7, see PROPERTY and other specific topics

Article 8, see CORPORATIONS AND BUSINESS ORGANIZATIONS V

Article 9, see SECURED TRANSACTIONS

War, effect of on preexisting contracts of sale, see WAR AND NATIONAL EMERGENCY ¶1022

I. IN GENERAL, ¶501–600.

II. PARTIES TO TRANSACTION OR CONTRACT, ¶601–700.

III. NATURE AND FORMATION OF CONTRACT, ¶701–800.

IV. VALIDITY AND ENFORCEABILITY OF CONTRACT, ¶801–900.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES, ¶901–1300.

(A) IN GENERAL, ¶901–930.

(B) GOODS SUBJECT TO CONTRACT IN GENERAL, ¶931–950.

(C) DELIVERY AND ACCEPTANCE OF GOODS, ¶951–1070.

1. IN GENERAL, ¶951–980.

2. QUALITY, VALUE, FITNESS, AND CONDITION OF GOODS, ¶981–1000.

3. QUANTITY OF GOODS, ¶1001–1010.

4. ACCEPTANCE OR REJECTION OF NONCONFORMING GOODS, ¶1011–1030.

5. REVOCATION OF ACCEPTANCE, ¶1031–1050.

6. SALE ON TRIAL OR APPROVAL; CONTRACTS FOR SALE OR RETURN, ¶1051–1070.

(D) AMOUNTS PAYABLE, ¶1071–1090.

(E) DUTIES AND EXPENSES OF TRANSPORTATION, ¶1091–1100.

(F) PAYMENT, ¶1101–1120.

(G) TRANSFER OF TITLE, ¶1121–1170.

(H) RISK OF LOSS, ¶1171–1190.

343. SALES

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES—Cont'd

- (I) ASSURANCE OF PERFORMANCE, ⚭1191–1210.
- (J) REPUDIATION, ⚭1211–1220.
- (K) EXCUSES FOR NONPERFORMANCE OR BREACH, ⚭1221–1240.
- (L) WAIVER AND ESTOPPEL, ⚭1241–1300.

VI. DURATION OF CONTRACT, ⚭1301–1400.

VII. ASSIGNMENT OF CONTRACT, ⚭1401–1500.

VIII. MODIFICATION OF CONTRACT, ⚭1501–1600.

IX. WARRANTIES, ⚭1601–1900.

- (A) IN GENERAL, ⚭1601–1620.

- (B) EXPRESS WARRANTIES, ⚭1621–1670.

- 1. IN GENERAL, ⚭1621–1640.
- 2. OPERATION AND EFFECT, ⚭1641–1670.

- (C) WARRANTIES IMPOSED BY LAW; IMPLIED WARRANTIES, ⚭1671–1770.

- 1. IN GENERAL, ⚭1671–1680.
- 2. PARTICULAR WARRANTIES, ⚭1681–1710.
- 3. FITNESS FOR ORDINARY PURPOSE OR USE; MERCHANTABILITY, ⚭1711–1740.
- 4. FITNESS FOR PARTICULAR PURPOSE OR USE, ⚭1741–1770.

- (D) EXCLUSION, MODIFICATION, OR LIMITATION OF WARRANTIES, ⚭1771–1800.

- 1. IN GENERAL, ⚭1771–1790.
- 2. EXPRESS WARRANTIES, ⚭1791–1800.

- (E) CUMULATION AND CONFLICT OF WARRANTIES, ⚭1801–1810.

- (F) PARTIES TO WARRANTIES, PRIVACY, AND THIRD-PARTY BENEFICIARIES, ⚭1811–1850.

- (G) NOTICE AND OPPORTUNITY TO CURE, ⚭1851–1880.

- (H) WAIVER OF BREACH, ⚭1881–1900.

X. REMEDIES, ⚭1901–2400.

- (A) IN GENERAL, ⚭1901–1910.

- (B) PARTICULAR REMEDIES OF SELLER, ⚭1911–2110.

- 1. STOPPING, WITHHOLDING, OR REFUSING DELIVERY, ⚭1911–1930.

X. REMEDIES—Cont'd

- (B) PARTICULAR REMEDIES OF SELLER—Cont'd

- 2. LIEN OR SECURITY INTEREST OF SELLER, ⚭1931–1950.
- 3. RECOVERY OF GOODS BY SELLER; RECLAMATION, ⚭1951–1970.
- 4. RESALE OF GOODS BY SELLER, ⚭1971–1980.
- 5. MONETARY REMEDIES OF SELLER, ⚭1981–2110.

- (C) PARTICULAR REMEDIES OF BUYER, ⚭2111–2240.

- 1. LIEN OR SECURITY INTEREST OF BUYER, ⚭2111–2120.
- 2. RECOVERY OF GOODS BY BUYER, ⚭2121–2130.
- 3. RESALE OF GOODS BY BUYER, ⚭2131–2140.
- 4. MONETARY REMEDIES OF BUYER IN GENERAL, ⚭2141–2190.
- 5. MONETARY REMEDIES OF BUYER FOR BREACH OF WARRANTY, ⚭2191–2240.

- (D) RESCISSION, ⚭2241–2280.

- (E) EXCLUSIVE, CONCURRENT, AND CONFLICTING REMEDIES; ELECTION, ⚭2281–2300.

- (F) CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY, ⚭2301–2400.

XI. ACTIONS, ⚭2401–2900.

- (A) IN GENERAL, ⚭2401–2450.

- (B) ACTIONS ON WARRANTIES, ⚭2451–2600.

- 1. IN GENERAL, ⚭2451–2500.
- 2. ACTIONS FOR RESCISSION OR REDHIBITION, ⚭2501–2600.

- (C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ⚭2601–2660.

- (D) ADMISSIBILITY OF EVIDENCE, ⚭2661–2720.

- (E) WEIGHT AND SUFFICIENCY OF EVIDENCE, ⚭2721–2780.

- (F) QUESTIONS OF LAW OR FACT, ⚭2781–2840.

- (G) INSTRUCTIONS, ⚭2841–2900.

XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS, ⚭2901–3000.

- (A) IN GENERAL, ⚭2901–2910.

- (B) TRANSFEREES AND PURCHASERS IN GENERAL, ⚭2911–2920.

- (C) GOOD-FAITH PURCHASERS, ⚭2921–2950.

- (D) ENTRUSTED GOODS, ⚭2951–2960.

343. SALES**XII. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS—Cont'd****(E) LOST, STOLEN, OR DAMAGED
GOODS,** Ⓒ2961–2970.**(F) CREDITORS' RIGHTS AND LIA-
BILITIES,** Ⓒ2971–2980.**(G) ACTIONS,** Ⓒ2981–3000.**XIII. CONDITIONAL SALES,**
Ⓒ3001–3052.**I. IN GENERAL.**

- 501. In general.
- 502. Statutory provisions.
- 503. — In general.
- 504. — Purpose and construction in general.
- 505. — Operation and effect.
- 506. — Validity.
- 507. — Retroactive or prospective operation.
- 508. What law governs.
- 509. — In general.
- 510. — Common law.
- 511. — International issues.
- 512. Federal preemption.
- 513. — In general.
- 514. — Warranties and redhibition.
- 515. Nature and definition of sale; other transactions distinguished.
Conditional sales, see Ⓒ3004. *Chattel mortgages, see*
CHATTEL MORTGAGES Ⓒ6. *Secured transactions,*
see *SECURED TRANSACTIONS* Ⓒ10. *Gifts, see*
GIFTS Ⓒ5(2).
- 516. — In general.
- 517. — Bailments and leases.
 - (1). In general.
 - (2). Particular transactions.
- 518. — Contracts to buy or sell; future sales.
- 519. — Options to buy or sell.
- 520. — Warehouse deposits.
- 521. — Pledges.
- 522. — Agency.
- 523. — Consignment.
- 524. Subject matter of sale.
- 525. — In general.
- 526. — Goods in general.
- 527. — Services in general.
- 528. — Mixed or hybrid transactions.
- 529. — Existence of subject matter; future goods.
- 530. — Ownership or interest of seller.

I. IN GENERAL.(Cont'd)

- 531. — After-acquired property.
- 532. — Particular cases and subjects.
 - (1). In general.
 - (2). Personal property and chattels in general.
 - (3). Real property in general.
 - (4). Things attached to or to be severed from realty in general; fixtures in general.
 - (5). Buildings, structures, and construction.
 - (6). Plants, crops, and agriculture.
 - (7). Animals and livestock.
 - (8). Machinery and equipment.
 - (9). Mining, minerals, and fuel.
 - (10). Water.
 - (11). Food and beverages.
 - (12). Motor vehicles.
 - (13). Mobile homes or structures.
 - (14). Aircraft and aviation.
 - (15). Vessels and shipping.
 - (16). Tangible or intangible property.
 - (17). Intellectual property.
 - (18). Things in action.
 - (19). Money.
 - (20). Loans, securities, and finance.
 - (21). Insurance.
 - (22). Health care.
 - (23). Power and electricity.
 - (24). Telecommunications.
 - (25). Computers and software.
 - (26). Art and jewelry.
- 533. Medium or mode of sale.
- 534. Completion or perfection of sale.
- 535. — In general.
- 536. — Necessity of delivery.

**II. PARTIES TO TRANSACTION
OR CONTRACT.**

- 601. In general.
- 602. Buyer.
- 603. Seller.
- 604. Merchant.
- 605. Financing agency.
- 606. Capacity and right to buy or sell.
- 607. Participation in and relation to transaction.
- 608. Privity in general.

343. SALES**III. NATURE AND FORMATION
OF CONTRACT.**

- 701. In general.
- 702. Elements in general.
- 703. Certainty and definiteness.
- 704. — In general.
- 705. — As to subject matter.
- 706. — As to quantity; requirements contracts.
- 707. — As to price.
- 708. — As to time of performance.
- 709. Intent of parties; assent.
- 710. — In general.
- 711. — Meeting of the minds.
- 712. Mutuality of obligation.
- 713. Finality and completeness.
- 714. — In general.
- 715. — Time of making contract.
- 716. — Negotiations and preliminary agreements.
- 717. — Agreements to agree.
- 718. Offer and acceptance.
- 719. — In general.
- 720. — Offer to sell.
 - (1). In general.
 - (2). Price quotations.
 - (3). Acceptance of offer to sell.
- 721. — Offer to buy.
 - (1). In general.
 - (2). Orders for goods.
 - (3). Acceptance of offer to buy.
- 722. — Duration of offer; time for acceptance.
- 723. — Withdrawal or revocation of offer.
 - (1). In general.
 - (2). Offer to sell.
 - (3). Offer to buy.
- 724. — Firm offer.
- 725. — Variance from offer; additional terms in acceptance or confirmation.
 - (1). In general.
 - (2). Offer to sell.
 - (3). Offer to buy.
 - (4). Qualified or conditional acceptance.
- 726. — Rejection of offer.
- 727. — “Shrinkwrap” agreements.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 728. Consideration.

**III. NATURE AND FORMATION
OF CONTRACT.(Cont'd)**

- 729. — In general.
- 730. — Want or failure of consideration.
- 731. Options.
- 732. — In general.
- 733. — Options to buy.
- 734. — Options to sell.
- 735. — Rights of first refusal.
- 736. Manner and requisites of expression of agreement.
- 737. — In general.
- 738. — Written contracts.
 - (1). In general.
 - (2). Form and contents.
 - (3). Execution.
 - (4). Signature.
 - (5). Delivery.
- 739. — Brokers’ bought and sold notes.
- 740. — Correspondence.
- 741. — Invoices.
- 742. — Electronic media.
- 743. — Oral contracts.
 - (1). In general.
 - (2). Confirmation or memorialization.
- 744. — Conduct of parties; implied agreements.
- 745. Place of making contract.
- 746. Conditions precedent to formation.

**IV. VALIDITY AND ENFORCEABILITY
OF CONTRACT.**

- 801. In general.
- 802. Mistake.
- 803. — In general.
- 804. — Signing in ignorance of contents.
- 805. Misrepresentation and fraud.
- 806. — In general.
- 807. — By seller.
 - (1). In general.
 - (2). Intent and knowledge of seller.
 - (3). Matters of fact or of opinion or commendation.
 - (4). Representations not contained in written contract or warranty.
 - (5). Concealment.
 - (6). Communication of representations.
 - (7). Reliance on representations.

343. SALES**IV. VALIDITY AND ENFORCEABILITY
OF CONTRACT.(Cont'd)**

- (8). Fraudulent procurement of signature.
- (9). Title or interest.
- (10). Quality or value.
- (11). Doctrine of caveat emptor.
- 808. — By buyer.
 - (1). In general.
 - (2). Intent and knowledge.
 - (3). Matters of fact or of opinion.
 - (4). Reliance on representations.
 - (5). Representations as to value.
 - (6). Intent not to pay.
 - (7). Insolvency or inability to pay, and concealment thereof.
 - (8). Representations as to financial condition in general.
 - (9). Statements to and reports by third parties.
- 809. — Effect.
- 810. Duress.
- 811. Undue influence.
- 812. Illegality.
- 813. — In general.
- 814. — Violation of public policy.
- 815. Unreasonable or oppressive contracts.
- 816. — In general.
- 817. — Adhesion contracts in general.
- 818. — Unconscionability in general.
- 819. — Particular contracts and provisions.
- 820. Partial invalidity.
- 821. Estoppel or waiver as to defects or objections.
- 822. Ratification of contract.

**V. TERMS OF CONTRACT; RIGHTS AND
OBLIGATIONS OF PARTIES.****(A) IN GENERAL.**

- 901. In general.
- 902. General rules of construction.
- 903. — In general.
- 904. — Construction against drafter.
- 905. — Construing documents together.
 - (1). In general.
 - (2). Incorporation by reference.
- 906. — Extrinsic circumstances; construction by parties.
 - (1). In general.

**V. TERMS OF CONTRACT; RIGHTS AND
OBLIGATIONS OF PARTIES.(Cont'd)**

- (2). Course of dealing; course of performance.
- 907. Performance and breach in general.
- 908. — In general.
- 909. — By seller.
- 910. — By buyer.
- 911. Particular terms and obligations in general.
- 912. Implied terms and obligations in general.
- 913. Good faith and fair dealing in general.
- 914. Conditions and provisos in general.
- 915. Notice requirements in general.
- 916. Operation and effect of transaction or contract in general.
- 917. Executed and executory contracts.
- 918. Entire or severable contracts.
- 919. Options; rights of first refusal.

(B) GOODS SUBJECT TO CONTRACT IN GENERAL.

- 931. In general.
- 932. Description in general.
- 933. Specific articles or goods.
- 934. Identification, selection, and appropriation.
- 935. Title or possession of seller.
Transfer of title, see V(G). Warranties, see IX.
- 936. Property interest of buyer.

(C) DELIVERY AND ACCEPTANCE OF GOODS.**1. IN GENERAL.**

- 951. In general.
- 952. Delivery in general.
- 953. — In general.
- 954. — Ability and readiness of seller to deliver.
- 955. — Demand or notice by buyer.
- 956. — Tender or offer by seller.
- 957. Manner or mode of delivery; acts constituting delivery.
- 958. — In general.
- 959. — Property left in possession of seller.
- 960. — Property in possession of buyer.
- 961. — Property left in possession of third person.
- 962. — Access of and removal by buyer.
- 963. — Delivery to or through carrier or other intermediary.

343. SALES**V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)**

- 964. — Symbolical or constructive delivery.
- 965. Place of delivery.
- 966. Time of delivery.
- 967. — In general.
- 968. — Time as being “of the essence”.
- 969. — Immediate delivery or as soon as possible.
- 970. — Reasonable time.
- 971. Acceptance in general.
- 972. Manner or mode of acceptance; acts constituting acceptance.
- 973. — In general.
- 974. — Timeliness; effect of buyer’s delay.
- 975. — Failure or refusal to return goods.
- 976. — Use or other disposition of goods by buyer.
- 977. Partial delivery and acceptance; installments.

2. QUALITY, VALUE, FITNESS, AND CONDITION OF GOODS.*Warranties, see IX.*

- 981. In general.
- 982. Particular cases and goods in general.
- 983. Conformity to contract; perfect tender.
- 984. Fitness for purpose intended.
- 985. Obvious, latent, or hidden defects.
- 986. Injuries from defects.
- 987. Loss of or injury to goods.
- 988. Inspection and testing.
- 989. — In general.
- 990. — Time and place.
- 991. — Mode, extent, and reasonableness.
- 992. Sale by sample.
- 993. Doctrine of caveat emptor.

3. QUANTITY OF GOODS.*Warranties, see IX.*

- 1001. In general.
- 1002. Definite, indefinite, or unknown quantity in general.
- 1003. Particular cases and goods in general.
- 1004. Weight, volume, or other measure of quantity.
- 1005. Output contracts, requirements contracts, and exclusive dealings.
- 1006. — In general.
- 1007. — Buyer’s obligations, performance, and breach.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 1008. — Seller’s obligations, performance, and breach.

4. ACCEPTANCE OR REJECTION OF NONCONFORMING GOODS.

- 1011. In general.
- 1012. Particular cases and goods in general.
- 1013. Partial delivery and acceptance; installments.
- 1014. Notice and opportunity to cure.
- 1015. Time for acceptance, rejection, or notice.
- 1016. Adequacy of efforts to cure.
- 1017. — In general.
- 1018. — Timeliness.
- 1019. Rights and duties as to rightfully rejected goods.
- 1020. — In general.
- 1021. — Merchant buyer.
- 1022. Acceptance after rejection or cure; re-acceptance.

5. REVOCATION OF ACCEPTANCE.*Repudiation, see V(J). Cancellation and termination, see VI. Rescission, see X(D).*

- 1031. In general.
- 1032. Grounds; substantial impairment.
- 1033. Persons against whom revocation may be had.
- 1034. — In general.
- 1035. — Privity in general.
- 1036. — Manufacturers.
- 1037. Partial revocation.
- 1038. Notice and opportunity to cure.
- 1039. Timeliness.
- 1040. Substantial change in condition of goods.
- 1041. Rights and duties after rightful revocation.
- 1042. Acceptance after revocation; reacceptance.

6. SALE ON TRIAL OR APPROVAL; CONTRACTS FOR SALE OR RETURN.

- 1051. In general.
- 1052. Right to return or reject goods.
- 1053. Mode, extent, and reasonableness of trial or test.
- 1054. Acceptance or approval of goods.

343. SALES**V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)**

- 1055. Exercise of right to return or reject goods.
- 1056. — In general.
- 1057. — Time and place of return or rejection.
- 1058. — Notice to seller.
- 1059. — Rights and liabilities of parties.
- 1060. Loss or waiver of right to return or reject.
- 1061. Loss or impairment of property before acceptance.
- 1062. Effect of failure to return goods.

(D) AMOUNTS PAYABLE.

- 1071. In general.
- 1072. Price.
- 1073. — In general.
- 1074. — Amount agreed on; contract price.
 - (1). In general.
 - (2). Ascertainment.
- 1075. — Market price.
- 1076. — Reasonable price.
- 1077. — Open price.
- 1078. Expenses in general.
- 1079. Credits and deductions; abatement.
- 1080. Interest and service charges.
- 1081. Taxes.

(E) DUTIES AND EXPENSES OF TRANSPORTATION.

- 1091. In general.
- 1092. Free on board (F.O.B.) contracts.
- 1093. Cost, insurance, and freight (C.I.F.) contracts.

(F) PAYMENT.

- 1101. In general.
- 1102. Demand for payment.
- 1103. Tender of payment.
- 1104. Place of payment.
- 1105. Time of payment and terms of credit.
- 1106. — In general.
- 1107. — Contract silent as to time.
- 1108. — Delivery of goods.
- 1109. — Delivery in installments.
- 1110. — Inspection and approval.
- 1111. Mode and sufficiency of payment.
- 1112. — In general.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 1113. — Cash.
- 1114. — Notes or other obligations, and payment thereof.
- 1115. Payment in full.
- 1116. Installments and deferred payments.
Retail installment sales statutes, see FINANCE, BANKING, AND CREDIT III.

(G) TRANSFER OF TITLE.

Title or possession of seller, see ¶935.

- 1121. In general.
- 1122. Specific articles or goods in general.
- 1123. Acts to be done before passage of title in general.
- 1124. Ascertainment of quantity or price.
- 1125. Identification of goods.
- 1126. — In general.
- 1127. — Part of specific stock or mass.
- 1128. — Part of contents of public warehouse or elevator.
- 1129. — Selection and appropriation by assent of parties.
- 1130. — Appropriation by seller.
- 1131. — Appropriation by buyer.
- 1132. Delivery and acceptance.
- 1133. — In general; necessity and effect.
- 1134. — Provisions of contract.
- 1135. — Character, location, and possession of property.
- 1136. — Delivery to or through carrier or other intermediary.
- 1137. — Symbolical or constructive delivery.
- 1138. — Delivery in installments.
- 1139. — Inspection, trial, or test.
- 1140. — Consent to delivery; acceptance or rejection of goods.
- 1141. — Acts to be done after delivery.
- 1142. Payment of price.
- 1143. — In general; necessity and effect.
- 1144. — Payment by note, check, or acceptance.
- 1145. — Effect of delivery of goods in general.
- 1146. — Delivery to or through carrier in general.
- 1147. — Bill of lading, shipping receipt, and order for collection of price.
- 1148. — Effect of partial payment.

343. SALES**V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)**

- 1149. Sale on credit.
- 1150. Sale on trial or approval.
- 1151. Contract for sale or return.
- 1152. Articles or goods to be produced or manufactured.
- 1153. Bill of sale or other instrument of conveyance.
- 1154. — In general.
- 1155. — Necessity and duty to make.
- 1156. — Nature and essentials in general.
- 1157. — Form and contents.
 - (1). In general.
 - (2). Description of property.
- 1158. — Execution.
- 1159. — Delivery.
- 1160. — Validity.
- 1161. — Filing, recording, and registration.
- 1162. — Construction and operation.
- 1163. Place of transfer of title.
- 1164. Rights and liabilities of parties as to each other before transfer.
- 1165. Reconveyance by buyer to seller.

(H) RISK OF LOSS.

- 1171. In general.
- 1172. Relation to title in general.
- 1173. Delivery and acceptance.
- 1174. — In general.
- 1175. — Delivery to or through carrier or other intermediary.
- 1176. Payment of price.
- 1177. Sale on credit.
- 1178. Sale on trial or approval.
- 1179. Contract for sale or return.
- 1180. Articles or goods to be produced or manufactured.
- 1181. Agreement of parties as to risk of loss.

(I) ASSURANCE OF PERFORMANCE.

- 1191. In general.
- 1192. Grounds for request or demand.
- 1193. — In general.
- 1194. — By buyer to seller.
- 1195. — By seller to buyer.
- 1196. Adequacy of request or demand.
- 1197. Adequacy of assurance offered or provided.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 1198. — In general.
- 1199. — From seller to buyer.
- 1200. — From buyer to seller.

(J) REPUDIATION.

Revocation of acceptance, see V(C)5. Cancellation and termination, see VI. Rescission, see X(D).

- 1211. In general.
- 1212. By seller.
- 1213. By buyer.
- 1214. Anticipatory repudiation.
- 1215. — In general.
- 1216. — By seller.
- 1217. — By buyer.
- 1218. Retraction of repudiation.

(K) EXCUSES FOR NONPERFORMANCE OR BREACH.

- 1221. In general.
- 1222. Frustration.
- 1223. Impossibility.
- 1224. Impracticability.
- 1225. Force majeure.
- 1226. Financial insecurity; insolvency.
- 1227. Acts of buyer as excuse.
- 1228. — In general.
- 1229. — Buyer's nonperformance or breach in general.
- 1230. — Buyer's refusal to receive or take delivery of goods.
- 1231. Acts of third person.
- 1232. Excuses for buyer's nonperformance or breach.
- 1233. — In general.
- 1234. — Financial insecurity; insolvency.
- 1235. Notice of inability to perform.

(L) WAIVER AND ESTOPPEL.

- 1241. In general.
- 1242. Waiver of seller's rights.
- 1243. — In general.
- 1244. — As to quantity of goods purchased.
- 1245. — As to passage of title.
- 1246. Waiver of buyer's rights.
- 1247. — In general.
- 1248. — As to time, place, and manner of delivery.

343. SALES**V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)**

1249. — As to quality, value, fitness, and condition of goods.
- (1). In general.
 - (2). Inspection or opportunity to inspect.
 - (3). Failure or refusal to return goods.
 - (4). Use or other disposition of goods.
 - (5). Payment.
1250. — As to quantity of goods supplied.
1251. Retraction of waiver.
1252. Estoppel.
1253. — In general.
1254. — Estoppel of seller.
1255. — Estoppel of buyer.

VI. DURATION OF CONTRACT.

1301. In general.
1302. Cancellation or termination.
Revocation of acceptance, see V(C)5. Repudiation, see V(J). Rescission, see X(D).
1303. — In general.
1304. — By seller.
1305. — By buyer.
1306. — Notice and timeliness.
1307. — Options to cancel or terminate.
1308. Renewal of contract.
1309. Abandonment of contract.

VII. ASSIGNMENT OF CONTRACT.

1401. In general.
1402. Consent.
1403. Delegation.

VIII. MODIFICATION OF CONTRACT.

1501. In general.
1502. Intent of parties; assent.
1503. Offer and acceptance.
1504. Consideration.
1505. Manner and requisites of expression.
1506. — In general.
1507. — Modification by conduct, course of performance, or course of dealing.
1508. — Oral or written.
1509. Validity and enforceability.
1510. Operation and effect.
1511. Retraction.

IX. WARRANTIES.

Tort liability for injuries from defects in goods sold, see PRODUCTS LIABILITY.

(A) IN GENERAL.

1601. In general.
1602. Warranty distinguished from other grounds of liability.
1603. — In general.
1604. — Other contractual terms or obligations.
1605. — Negligence, products liability, and torts in general.
1606. — Misrepresentation or fraud.
1607. Consideration.
1608. — In general.
1609. — Warranty subsequent to contract of sale.
1610. Construction, operation, and effect in general.
1611. — In general.
1612. — Breach and elements thereof in general.
1613. — Particular cases and goods.

(B) EXPRESS WARRANTIES.**1. IN GENERAL.**

1621. In general.
1622. Making and requisites.
1623. — In general.
1624. — Statements or representations constituting warranty.
- (1). In general.
 - (2). Affirmations and promises in general.
 - (3). Intention of parties.
 - (4). Specific words or language.
 - (5). Descriptions.
 - (6). Matters of opinion or commendation.
 - (7). Statements as to kind, quality, condition, or value.
 - (8). Comparisons.
1625. — Samples or models.
1626. — Reliance.
1627. — Basis of bargain.
1628. — Advertising and promotion.
1629. — Warranty subsequent to contract of sale.
1630. Validity and enforceability.

343. SALES**2. OPERATION AND EFFECT.**

- 1641. In general.
- 1642. Construction in general.
- 1643. Breach and elements thereof in general.
- 1644. Particular cases and goods.
- 1645. — In general.
- 1646. — Buildings, structures, and construction.
- 1647. — Plants, crops, and agriculture.
- 1648. — Animals and livestock.
- 1649. — Machinery and equipment.
- 1650. — Food and beverages.
- 1651. — Motor vehicles.
- 1652. — Mobile homes or structures.
- 1653. — Drugs and medical devices.
- 1654. — Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 1655. Design defects.
- 1656. Duration of warranty.
- 1657. — In general.
- 1658. — Future defects and events; future performance.
- 1659. Used or second-hand goods.
- 1660. Causation.

**(C) WARRANTIES IMPOSED BY LAW;
IMPLIED WARRANTIES.****1. IN GENERAL.**

- 1671. In general.
- 1672. Breach and elements thereof in general.
- 1673. Particular cases and goods in general.

2. PARTICULAR WARRANTIES.

- 1681. In general.
- 1682. Identity or genuineness.
- 1683. Quantity.
- 1684. Quality, fitness, or condition.
Fitness for ordinary purpose or use, see IX(C)3. Merchantability, see IX(C)3. Fitness for particular purpose or use, see IX(C)4.
- 1685. — In general.
- 1686. — Knowledge of defects.
- 1687. — Obvious, latent, or hidden defects.
- 1688. — Doctrine of caveat emptor.
- 1689. — Examination or inspection.
- 1690. — Sale by sample.

IX. WARRANTIES.(Cont'd)

- 1691. — Fitness for intended purpose or use.
Fitness for ordinary purpose or use, see IX(C)3. Merchantability, see IX(C)3. Fitness for particular purpose or use, see IX(C)4.
- 1692. Redhibitory defects or vices.
- 1693. — In general.
- 1694. — Breach and elements thereof in general.
- 1695. — Particular cases and goods.
- 1696. Title.
- 1697. — In general.
- 1698. — Breach and elements thereof in general.
- 1699. — Particular cases and goods.

**3. FITNESS FOR ORDINARY PURPOSE
OR USE; MERCHANTABILITY.**

- 1711. In general.
- 1712. Reliance.
- 1713. Buyer's knowledge.
- 1714. Seller's knowledge.
- 1715. Seller as merchant.
- 1716. Breach and elements thereof in general.
- 1717. Particular cases and goods.
- 1718. — In general.
- 1719. — Buildings, structures, and construction.
- 1720. — Plants, crops, and agriculture.
- 1721. — Animals and livestock.
- 1722. — Machinery and equipment.
- 1723. — Food and beverages.
- 1724. — Motor vehicles.
- 1725. — Mobile homes or structures.
- 1726. — Drugs and medical devices.
- 1727. — Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 1728. Design defects.
- 1729. Duration of warranty.
- 1730. — In general.
- 1731. — Future defects and events; future performance.
- 1732. Used or second-hand goods.
- 1733. Causation.

4. FITNESS FOR PARTICULAR PURPOSE OR USE.

- 1741. In general.
- 1742. Reliance.

343. SALES**IX. WARRANTIES.(Cont'd)**

- 1743. Buyer's knowledge.
 - 1744. Seller's knowledge.
 - 1745. Breach and elements thereof in general.
 - 1746. Particular cases and goods.
 - 1747. — In general.
 - 1748. — Buildings, structures, and construction.
 - 1749. — Plants, crops, and agriculture.
 - 1750. — Animals and livestock.
 - 1751. — Machinery and equipment.
 - 1752. — Food and beverages.
 - 1753. — Motor vehicles.
 - 1754. — Mobile homes or structures.
 - 1755. — Drugs and medical devices.
 - 1756. — Computers and software.
- See also COPYRIGHTS AND INTELLECTUAL PROPERTY* ¶107.
- 1757. Design defects.
 - 1758. Duration of warranty.
 - 1759. — In general.
 - 1760. — Future defects and events; future performance.
 - 1761. Used or second-hand goods.
 - 1762. Causation.

(D) EXCLUSION, MODIFICATION, OR LIMITATION OF WARRANTIES.**1. IN GENERAL.**

- 1771. In general.
- 1772. Particular cases, goods, and warranties in general.
- 1773. Implied warranties in general.
- 1774. Warranties of quality, fitness, or condition.
- 1775. — In general.
- 1776. — Obvious, latent, or hidden defects.
- 1777. — Redhibitory defects or vices.
- 1778. Warranties of fitness for ordinary purpose or use; merchantability.
- 1779. — In general.
- 1780. — Particular cases and goods.
- 1781. Warranties of fitness for particular purpose or use.
- 1782. — In general.
- 1783. — Particular cases and goods.
- 1784. Warranties of title and against infringement thereof.

IX. WARRANTIES.(Cont'd)

- 1785. — In general.
- 1786. — Particular cases and goods.
- 1787. "As is" provisions.
- 1788. Course of dealing or course of performance.

2. EXPRESS WARRANTIES.

- 1791. In general.
- 1792. Particular cases and goods.

(E) CUMULATION AND CONFLICT OF WARRANTIES.

- 1801. In general.
- 1802. Intention of parties.
- 1803. Consistency of samples, specifications, and descriptions.
- 1804. Consistency of express and implied warranties.

(F) PARTIES TO WARRANTIES, PRIVACY, AND THIRD-PARTY BENEFICIARIES.

- 1811. In general.
- 1812. Express warranties in general.
- 1813. Implied warranties in general.
- 1814. Seller and parties related thereto; vertical privacy.
- 1815. — In general.
- 1816. — Manufacturers and others in distribution chain.
 - (1). In general.
 - (2). Motor vehicles.
- 1817. — Agents and other representatives.
- 1818. — Joint and several liability.
- 1819. Buyer and parties related thereto; horizontal privacy.
- 1820. — In general.
- 1821. — Users and consumers.
- 1822. — Family, household, and guests.
- 1823. — Employees.
- 1824. — Remote or subsequent purchasers.
- 1825. Other parties.
- 1826. — In general.
- 1827. — Bystanders.
- 1828. — General public.
- 1829. Nature of injury, damage, or loss.
- 1830. — In general.
- 1831. — Personal injuries.
- 1832. — Property damage.

343. SALES**IX. WARRANTIES.(Cont'd)**

- 1833. — Economic loss.
- 1834. Nature of good or product.
- 1835. — In general.
- 1836. — Dangerous instrumentalities in general.
- 1837. — Food and beverages.
- 1838. — Chemicals and pesticides.
- 1839. — Drugs and medical devices.
 - (1). In general.
 - (2). Learned-intermediary doctrine.
- 1840. Representations.
- 1841. — In general.
- 1842. — Advertising, marketing, and labeling.
- 1843. Assignment or other transfer of warranty.

(G) NOTICE AND OPPORTUNITY TO CURE.

- 1851. In general.
- 1852. Necessity and effect.
- 1853. — In general.
- 1854. — Notice as condition precedent.
- 1855. — Parties entitled to notice.
- 1856. — Waiver of notice.
- 1857. Time for giving notice.
- 1858. — In general.
- 1859. — Reasonable time.
- 1860. — Prejudice from delay.
- 1861. Mode and sufficiency of notice.
- 1862. — In general.
- 1863. — Actual or constructive notice.
- 1864. — Contractual provisions as to notice.
- 1865. — Commencement of litigation as notice.
- 1866. Adequacy of efforts to cure.
- 1867. Return of goods.
- 1868. — In general.
- 1869. — Waiver or refusal by seller.

(H) WAIVER OF BREACH.

- 1881. In general.
- 1882. Acceptance, use, or failure to return or object.
- 1883. Retention induced by promise or assurance by seller.
- 1884. Failure or delay as to notice of defects.

IX. WARRANTIES.(Cont'd)

- 1885. Time and opportunity to discover defects.
- 1886. Payment of price or giving of note.
- 1887. Estoppel.

X. REMEDIES.

Actions to obtain remedies, see XI.

(A) IN GENERAL.

- 1901. In general.
- 1902. Seller's remedies in general.
- 1903. Buyer's remedies in general.
- 1904. — In general.
- 1905. — Breach of warranty.
- 1906. — Redhibitory defects or vices.

(B) PARTICULAR REMEDIES OF SELLER.**1. STOPPING, WITHHOLDING, OR REFUSING DELIVERY.**

- 1911. In general.
- 1912. Sale on credit and nonpayment of price.
- 1913. Insolvency of buyer.
- 1914. Persons entitled to exercise right.
- 1915. Persons against whom right may be exercised.
- 1916. — In general.
- 1917. — Subsequent purchasers.
- 1918. Duration and termination of transit.
- 1919. Waiver or loss of right.
- 1920. Manner of exercise of right.
- 1921. Operation and effect.

2. LIEN OR SECURITY INTEREST OF SELLER.

Equitable liens, see LIENS ¶7.

- 1931. In general.
- 1932. Statutory provisions.
- 1933. What law governs.
- 1934. Lien reserved in contract of sale.
- 1935. Filing, recording, and registration.
- 1936. Lien arising from possession of seller.
- 1937. Amount and extent of lien.
- 1938. Property or interest subject to lien.
- 1939. Priorities.
- 1940. Assignment of lien.
- 1941. Transfer of property by buyer.
- 1942. — In general.
- 1943. — Rights and liabilities of subsequent purchasers.

343. SALES**X. REMEDIES.(Cont'd)**

- 1944. Waiver, loss, or discharge.
- 1945. Payment or satisfaction.
- 1946. Enforcement.
- 1947. Security interest.
Security interests under Article 9 of the Uniform Commercial Code, see SECURED TRANSACTIONS.

3. RECOVERY OF GOODS BY SELLER; RECLAMATION.

- 1951. In general.
- 1952. Nature and form of remedy.
- 1953. Right to remedy; grounds and defenses.
- 1954. — In general.
- 1955. — Misrepresentation or fraud in general.
- 1956. — Insolvency of buyer.
- 1957. — Cash or credit sale.
- 1958. — Waiver or loss of right.
- 1959. Right to follow proceeds.
- 1960. Demand or notice.

4. RESALE OF GOODS BY SELLER.

- 1971. In general.
- 1972. Identification of goods.
- 1973. Unfinished goods.
- 1974. Notice.
- 1975. Place and time of sale.
- 1976. Manner and conduct of sale.
- 1977. Right to proceeds.
- 1978. Obligation to resell.

5. MONETARY REMEDIES OF SELLER.

- 1981. In general.
- 1982. Damages in general.
- 1983. Particular cases and goods in general.
- 1984. Price or value.
- 1985. — In general.
- 1986. — Grounds of recovery; elements.
- 1987. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.

X. REMEDIES.(Cont'd)

- (9). Drugs and medical devices.
- (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 1988. Resale price.
- 1989. — In general.
- 1990. — Difference from contract price.
- 1991. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 1992. Market price or value.
- 1993. — In general.
- 1994. — Difference from contract price.
- 1995. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 1996. Lost profits.
- 1997. — In general.
- 1998. — Lost volume sellers.
- 1999. — Jobbers and component sellers.
- 2000. Unique or specialty goods.
- 2001. — In general.
- 2002. — Lost profits.
- 2003. Additional or incidental damages.
- 2004. — In general.
- 2005. — Expenses connected with delivery, transportation, care, and custody of goods.

343. SALES**X. REMEDIES.(Cont'd)**

- 2006. Special, indirect, or consequential damages.
- 2007. Mitigation or reduction of loss.
- 2008. — In general.
- 2009. — Expenses saved and costs avoided.
- 2010. Punitive or exemplary damages.

(C) PARTICULAR REMEDIES OF BUYER.**1. LIEN OR SECURITY INTEREST OF BUYER.**

Equitable liens, see LIENS \S 7.

- 2111. In general.
- 2112. Particular cases and goods.

2. RECOVERY OF GOODS BY BUYER.

- 2121. In general.
- 2122. Nature and form of remedy.
- 2123. Right to remedy; grounds and defenses.
- 2124. — In general.
- 2125. — Insolvency of seller.
- 2126. — Ability of buyer to effect cover.
- 2127. — Payment or tender of price.
- 2128. Right to follow proceeds.
- 2129. Demand or notice.

3. RESALE OF GOODS BY BUYER.

- 2131. In general.
- 2132. Particular cases and goods.
- 2133. Right to proceeds.

4. MONETARY REMEDIES OF BUYER IN GENERAL.

- 2141. In general.
- 2142. Damages in general.
- 2143. — In general.
- 2144. — Nondelivery or repudiation by seller.
- 2145. — Nonconforming goods.
- 2146. Particular cases and goods in general.
- 2147. — In general.
- 2148. — Buildings, structures, and construction.
- 2149. — Plants, crops, and agriculture.
- 2150. — Animals and livestock.
- 2151. — Machinery and equipment.
- 2152. — Food and beverages.
- 2153. — Motor vehicles.
- 2154. — Mobile homes or structures.

X. REMEDIES.(Cont'd)

- 2155. — Drugs and medical devices.
- 2156. — Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY \S 107.
- 2157. Recovery of amounts paid.
- 2158. — In general.
- 2159. — Deposits, earnest money, and down payments.
- 2160. — Overpayments.
- 2161. Procurement and price of substitute goods; “cover”.
- 2162. — In general.
- 2163. — Difference from contract price.
- 2164. — Expenses or commissions.
- 2165. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY \S 107.
- 2166. Market price or value.
- 2167. — In general.
- 2168. — Difference from contract price.
- 2169. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY \S 107.
- 2170. Additional or incidental damages; expenses.
- 2171. — In general.
- 2172. — Inspection, receipt, transportation, care, and custody of goods.

343. SALES**X. REMEDIES.(Cont'd)**

- 2173. Special, indirect, or consequential damages; lost profits.
- 2174. — In general.
- 2175. — Due to nondelivery or repudiation by seller.
- 2176. — Due to delay in delivery.
- 2177. — Due to nonconforming goods.
- 2178. — Goods intended for particular purpose.
- 2179. — Goods intended for resale.
- 2180. Mitigation or reduction of loss.
- 2181. — In general.
- 2182. — Expenses saved and costs avoided.
- 2183. Punitive or exemplary damages.

5. MONETARY REMEDIES OF BUYER FOR BREACH OF WARRANTY.

- 2191. In general.
- 2192. Damages in general.
- 2193. Particular cases and goods in general.
- 2194. — In general.
- 2195. — Buildings, structures, and construction.
- 2196. — Plants, crops, and agriculture.
- 2197. — Animals and livestock.
- 2198. — Machinery and equipment.
- 2199. — Food and beverages.
- 2200. — Motor vehicles.
- 2201. — Mobile homes or structures.
- 2202. — Drugs and medical devices.
- 2203. — Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
- 2204. Recovery of amounts paid.
- 2205. Reduction of price; quanti minoris.
- 2206. Procurement and price of substitute goods; “cover”.
- 2207. Value of goods.
- 2208. — In general.
- 2209. — Market value or price in general.
- 2210. — Difference from value as warranted.
- 2211. — Difference from contract price.
- 2212. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.

X. REMEDIES.(Cont'd)

- (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
 - 2213. Additional or incidental damages; expenses.
 - 2214. — In general.
 - 2215. — Expenses connected with repair, recall, or return.
 - 2216. Special, indirect, or consequential damages; lost profits.
 - 2217. — In general.
 - 2218. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.
 - 2219. Lost, destroyed, or worthless goods.
 - 2220. Injuries to other property.
 - 2221. Personal injuries.
 - 2222. Mitigation or reduction of loss.
 - 2223. — In general.
 - 2224. — Expenses saved and costs avoided.
 - 2225. — Use or resale of defective goods.
 - 2226. Punitive or exemplary damages.
 - 2227. Monetary remedies for breach of warranty of title.
 - 2228. — In general.
 - 2229. — Particular cases and goods.
 - 2230. Interest.
- (D) RESCISSION.**
- Revocation of acceptance, see V(C)5. Repudiation, see V(J). Cancellation and termination, see VI.*
- 2241. In general.

343. SALES**X. REMEDIES.(Cont'd)**

- 2242. Status of doctrine under Uniform Commercial Code.
- 2243. Right to rescind; grounds.
- 2244. — In general.
- 2245. — Invalidity of contract.
- 2246. — Breach of contract or condition in general.
- 2247. — Nonpayment of price.
- 2248. — Insolvency.
- 2249. — Failure of consideration.
- 2250. — Failure to deliver.
- 2251. — Defect in title.
- 2252. — Defect in quantity or quality of goods.
- 2253. — Breach of warranty.
- 2254. — Redhibitory defects or vices.
- 2255. Persons against whom rescission may be had.
- 2256. — In general.
- 2257. — Privity in general.
- 2258. — Manufacturers.
- 2259. Waiver or estoppel.
- 2260. Conditions precedent.
- 2261. — In general.
- 2262. — Restoration of consideration.
- 2263. — Restoration of goods.
- 2264. Defenses or objections.
- 2265. Time for rescission, and laches.
- 2266. — In general.
- 2267. — Rescission by seller.
- 2268. — Rescission by buyer.
 - (1). In general.
 - (2). Inspection, trial, or test.
 - (3). Delay induced by seller.
- 2269. Acts constituting rescission.
- 2270. Partial rescission.
- 2271. Agreements to rescind; mutual rescission.
- 2272. Operation and effect.
- 2273. Effect of refusal of seller to receive goods.
- 2274. — In general.
- 2275. — Resale by buyer.

(E) EXCLUSIVE, CONCURRENT, AND CONFLICTING REMEDIES; ELECTION.

- 2281. In general.
- 2282. Seller's remedies.

X. REMEDIES.(Cont'd)

- 2283. — In general.
- 2284. — Recovery of goods; reclamation.
- 2285. Buyer's remedies.
- 2286. — In general.
- 2287. — Effect of revocation of acceptance.
- 2288. — Procurement of substitute goods; "cover".
- 2289. — Warranties.
- 2290. — Economic loss doctrine.
- 2291. Relation of rescission to other remedies.
- 2292. — In general.
- 2293. — Rescission by seller.
- 2294. — Rescission by buyer.
- 2295. — Rescission for breach of warranty; redhibition.
- 2296. Effect of cancellation or rescission on claims for antecedent breach.

(F) CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY.

- 2301. In general.
- 2302. Validity and enforceability in general.
- 2303. Incidental, consequential, indirect, or special damages.
- 2304. Warranties.
- 2305. — In general.
- 2306. — Validity and enforceability in general.
- 2307. — Incidental, consequential, indirect, or special damages.
- 2308. — Repair or replacement.
- 2309. Liquidated damages.
- 2310. — In general.
- 2311. — Deposits, forfeitures, and restitution.

XI. ACTIONS.**(A) IN GENERAL.**

- 2401. In general.
- 2402. Existence, nature, and form of action.
- 2403. — In general.
- 2404. — Action by seller.
- 2405. — Action by buyer.
- 2406. — Good faith and fair dealing.
- 2407. — Rescission.
- 2408. Conditions precedent.

343. SALES**XI. ACTIONS.**(Cont'd)

- 2409. — In general.
- 2410. — Action by seller.
- 2411. — Action by buyer.
- 2412. Defenses.
- 2413. — In general.
- 2414. — Action by seller; buyer's defenses.
 - (1). In general.
 - (2). Breach of warranty as defense.
- 2415. — Action by buyer; seller's defenses.
- 2416. Set-off and counterclaim.
- 2417. — In general.
- 2418. — Buyer's set-off and counterclaim against seller.
 - (1). In general.
 - (2). Breach of warranty.
- 2419. — Seller's set-off and counterclaim against buyer.
- 2420. Jurisdiction and venue.
- 2421. Time to sue; limitations and laches.
- 2422. — In general.
- 2423. — Action by seller.
- 2424. — Action by buyer.
- 2425. — Good faith and fair dealing.
- 2426. — Rescission.
- 2427. Parties.
- 2428. Standing.
- 2429. Pleading.
- 2430. — In general.
- 2431. — Particular actions and claims.
 - (1). In general.
 - (2). Action by seller.
 - (3). Action by buyer.
 - (4). Good faith and fair dealing.
 - (5). Rescission.
- 2432. — Answer and subsequent pleadings.
 - (1). In general.
 - (2). Buyer's assertion of breach of warranty.
- 2433. — Variance between pleadings and proof.
- 2434. Trial or hearing.
- 2435. — In general.

Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2436. — Verdict and findings.
- 2437. Judgment, order, or decree.

Remedies, see X.

- 2438. Costs and fees.

(B) ACTIONS ON WARRANTIES.**1. IN GENERAL.**

- 2451. In general.
- 2452. Existence, nature, and form of action.
- 2453. Conditions precedent.
- 2454. Defenses.
- 2455. — In general.
- 2456. — Misuse or unreasonable use.
- 2457. — Negligence or fault.
- 2458. — Assumption of risk.
- 2459. Set-off and counterclaim.
- 2460. Jurisdiction and venue.
- 2461. Time to sue; limitations and laches.
- 2462. Parties.
- 2463. Standing.
- 2464. Pleading.
- 2465. — In general.
- 2466. — Particular actions and claims.
- 2467. — Answer and subsequent pleadings.
- 2468. — Variance between pleadings and proof.
- 2469. Trial or hearing.
- 2470. — In general.

Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2471. — Verdict and findings.
- 2472. Judgment, order, or decree.

Remedies, see X.
- 2473. Costs and fees.

2. ACTIONS FOR RESCISSION OR REDHIBITION.

- 2501. In general.
- 2502. Existence, nature, and form of action.
- 2503. Conditions precedent.
- 2504. Defenses.
- 2505. Set-off and counterclaim.
- 2506. Jurisdiction and venue.
- 2507. Time to sue; limitations and laches.
- 2508. Parties.
- 2509. Standing.
- 2510. Pleading.
- 2511. — In general.
- 2512. — Particular actions and claims.
- 2513. — Answer and subsequent pleadings.

343. SALES**XI. ACTIONS.(Cont'd)**

- 2514. — Variance between pleadings and proof.
- 2515. Trial or hearing.
- 2516. — In general.
Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2517. — Verdict and findings.
- 2518. Judgment, order, or decree.
Remedies, see X.
- 2519. Costs and fees.

(C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.

- 2601. In general.
- 2602. Nature and subject matter of sale.
- 2603. Parties to transaction or contract.
- 2604. Nature and formation of contract.
- 2605. — In general.
- 2606. — Offer, acceptance, and consideration.
- 2607. Validity and enforceability of contract.
- 2608. — In general.
- 2609. — Misrepresentation and fraud.
- 2610. — Unreasonable, oppressive, or unconscionable contract.
- 2611. Terms of contract; rights and obligations of parties.
- 2612. — In general.
- 2613. — Goods subject to contract in general.
- 2614. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2615. — Amounts payable; price.
- 2616. — Duties and expenses of transportation.
- 2617. — Payment.
- 2618. — Transfer of title; risk of loss.
- 2619. — Assurance of performance.
- 2620. — Repudiation.
- 2621. — Excuses for nonperformance or breach.
- 2622. — Waiver and estoppel.

XI. ACTIONS.(Cont'd)

- 2623. Duration of contract.
- 2624. — In general.
- 2625. — Cancellation or termination of contract.
- 2626. Assignment of contract.
- 2627. Modification of contract.
- 2628. Warranties.
- 2629. — In general.
- 2630. — Express warranties.
- 2631. — Warranties imposed by law; implied warranties.
- 2632. — Exclusion, modification, or limitation of warranties.
- 2633. — Cumulation and conflict of warranties.
- 2634. — Parties to warranties, privity, and third-party beneficiaries.
- 2635. — Notice and opportunity to cure.
- 2636. — Waiver of breach.
- 2637. Remedies.
- 2638. — In general.
- 2639. — Rescission in general.
- 2640. — Monetary remedies and damages in general.
- 2641. — Price or value of goods in general.
- 2642. — Resale of goods and price thereof.
- 2643. — Procurement and price of substitute goods; “cover”.
- 2644. — Market price or value.
- 2645. — Additional or incidental damages; expenses.
- 2646. — Special, indirect, or consequential damages.
- 2647. — Lost profits.
- 2648. — Mitigation or reduction of loss.
- 2649. — Punitive or exemplary damages.
- 2650. — Exclusive, concurrent, and conflicting remedies; election.
- 2651. — Contractual modification or limitation of remedy.

(D) ADMISSIBILITY OF EVIDENCE.

- 2661. In general.
- 2662. Nature and subject matter of sale.
- 2663. Parties to transaction or contract.
- 2664. Nature and formation of contract.
- 2665. — In general.

343. SALES**XI. ACTIONS.(Cont'd)**

- 2666. — Offer, acceptance, and consideration.
- 2667. Validity and enforceability of contract.
- 2668. — In general.
- 2669. — Misrepresentation and fraud.
- 2670. — Unreasonable, oppressive, or unconscionable contract.
- 2671. Terms of contract; rights and obligations of parties.
- 2672. — In general.
- 2673. — Goods subject to contract in general.
- 2674. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2675. — Amounts payable; price.
- 2676. — Duties and expenses of transportation.
- 2677. — Payment.
- 2678. — Transfer of title; risk of loss.
- 2679. — Assurance of performance.
- 2680. — Repudiation.
- 2681. — Excuses for nonperformance or breach.
- 2682. — Waiver and estoppel.
- 2683. Duration of contract.
- 2684. — In general.
- 2685. — Cancellation or termination of contract.
- 2686. Assignment of contract.
- 2687. Modification of contract.
- 2688. Warranties.
- 2689. — In general.
- 2690. — Express warranties.
- 2691. — Warranties imposed by law; implied warranties.
- 2692. — Exclusion, modification, or limitation of warranties.
- 2693. — Cumulation and conflict of warranties.
- 2694. — Parties to warranties, privity, and third-party beneficiaries.

XI. ACTIONS.(Cont'd)

- 2695. — Notice and opportunity to cure.
- 2696. — Waiver of breach.
- 2697. Remedies.
- 2698. — In general.
- 2699. — Rescission in general.
- 2700. — Monetary remedies and damages in general.
- 2701. — Price or value of goods in general.
- 2702. — Resale of goods and price thereof.
- 2703. — Procurement and price of substitute goods; “cover”.
- 2704. — Market price or value.
- 2705. — Additional or incidental damages; expenses.
- 2706. — Special, indirect, or consequential damages.
- 2707. — Lost profits.
- 2708. — Mitigation or reduction of loss.
- 2709. — Punitive or exemplary damages.
- 2710. — Exclusive, concurrent, and conflicting remedies; election.
- 2711. — Contractual modification or limitation of remedy.

(E) WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 2721. In general.
- 2722. Nature and subject matter of sale.
- 2723. Parties to transaction or contract.
- 2724. Nature and formation of contract.
- 2725. — In general.
- 2726. — Offer, acceptance, and consideration.
- 2727. Validity and enforceability of contract.
- 2728. — In general.
- 2729. — Misrepresentation and fraud.
- 2730. — Unreasonable, oppressive, or unconscionable contract.
- 2731. Terms of contract; rights and obligations of parties.
- 2732. — In general.
- 2733. — Goods subject to contract in general.
- 2734. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.

343. SALES**XI. ACTIONS.(Cont'd)**

- (4). Acceptance or rejection of non-conforming goods.
- (5). Revocation of acceptance.
- (6). Sale on trial or approval; contracts for sale or return.
- 2735. — Amounts payable; price.
- 2736. — Duties and expenses of transportation.
- 2737. — Payment.
- 2738. — Transfer of title; risk of loss.
- 2739. — Assurance of performance.
- 2740. — Repudiation.
- 2741. — Excuses for nonperformance or breach.
- 2742. — Waiver and estoppel.
- 2743. Duration of contract.
- 2744. — In general.
- 2745. — Cancellation or termination of contract.
- 2746. Assignment of contract.
- 2747. Modification of contract.
- 2748. Warranties.
- 2749. — In general.
- 2750. — Express warranties.
- 2751. — Warranties imposed by law; implied warranties.
- 2752. — Exclusion, modification, or limitation of warranties.
- 2753. — Cumulation and conflict of warranties.
- 2754. — Parties to warranties, privity, and third-party beneficiaries.
- 2755. — Notice and opportunity to cure.
- 2756. — Waiver of breach.
- 2757. Remedies.
- 2758. — In general.
- 2759. — Rescission in general.
- 2760. — Monetary remedies and damages in general.
- 2761. — Price or value of goods in general.
- 2762. — Resale of goods and price thereof.
- 2763. — Procurement and price of substitute goods; “cover”.
- 2764. — Market price or value.
- 2765. — Additional or incidental damages; expenses.

XI. ACTIONS.(Cont'd)

- 2766. — Special, indirect, or consequential damages.
- 2767. — Lost profits.
- 2768. — Mitigation or reduction of loss.
- 2769. — Punitive or exemplary damages.
- 2770. — Exclusive, concurrent, and conflicting remedies; election.
- 2771. — Contractual modification or limitation of remedy.

(F) QUESTIONS OF LAW OR FACT.

- 2781. In general.
- 2782. Nature and subject matter of sale.
- 2783. Parties to transaction or contract.
- 2784. Nature and formation of contract.
- 2785. — In general.
- 2786. — Offer, acceptance, and consideration.
- 2787. Validity and enforceability of contract.
- 2788. — In general.
- 2789. — Misrepresentation and fraud.
- 2790. — Unreasonable, oppressive, or unconscionable contract.
- 2791. Terms of contract; rights and obligations of parties.
- 2792. — In general.
- 2793. — Goods subject to contract in general.
- 2794. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2795. — Amounts payable; price.
- 2796. — Duties and expenses of transportation.
- 2797. — Payment.
- 2798. — Transfer of title; risk of loss.
- 2799. — Assurance of performance.
- 2800. — Repudiation.
- 2801. — Excuses for nonperformance or breach.
- 2802. — Waiver and estoppel.
- 2803. Duration of contract.

343. SALES**XI. ACTIONS.(Cont'd)**

- 2804. — In general.
- 2805. — Cancellation or termination of contract.
- 2806. Assignment of contract.
- 2807. Modification of contract.
- 2808. Warranties.
- 2809. — In general.
- 2810. — Express warranties.
- 2811. — Warranties imposed by law; implied warranties.
- 2812. — Exclusion, modification, or limitation of warranties.
- 2813. — Cumulation and conflict of warranties.
- 2814. — Parties to warranties, privity, and third-party beneficiaries.
- 2815. — Notice and opportunity to cure.
- 2816. — Waiver of breach.
- 2817. Remedies.
- 2818. — In general.
- 2819. — Rescission in general.
- 2820. — Monetary remedies and damages in general.
- 2821. — Price or value of goods in general.
- 2822. — Resale of goods and price thereof.
- 2823. — Procurement and price of substitute goods; "cover".
- 2824. — Market price or value.
- 2825. — Additional or incidental damages; expenses.
- 2826. — Special, indirect, or consequential damages.
- 2827. — Lost profits.
- 2828. — Mitigation or reduction of loss.
- 2829. — Punitive or exemplary damages.
- 2830. — Exclusive, concurrent, and conflicting remedies; election.
- 2831. — Contractual modification or limitation of remedy.

(G) INSTRUCTIONS.

- 2841. In general.
- 2842. Nature and subject matter of sale.
- 2843. Parties to transaction or contract.
- 2844. Nature and formation of contract.
- 2845. — In general.

XI. ACTIONS.(Cont'd)

- 2846. — Offer, acceptance, and consideration.
- 2847. Validity and enforceability of contract.
- 2848. — In general.
- 2849. — Misrepresentation and fraud.
- 2850. — Unreasonable, oppressive, or unconscionable contract.
- 2851. Terms of contract; rights and obligations of parties.
- 2852. — In general.
- 2853. — Goods subject to contract in general.
- 2854. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2855. — Amounts payable; price.
- 2856. — Duties and expenses of transportation.
- 2857. — Payment.
- 2858. — Transfer of title; risk of loss.
- 2859. — Assurance of performance.
- 2860. — Repudiation.
- 2861. — Excuses for nonperformance or breach.
- 2862. — Waiver and estoppel.
- 2863. Duration of contract.
- 2864. — In general.
- 2865. — Cancellation or termination of contract.
- 2866. Assignment of contract.
- 2867. Modification of contract.
- 2868. Warranties.
- 2869. — In general.
- 2870. — Express warranties.
- 2871. — Warranties imposed by law; implied warranties.
- 2872. — Exclusion, modification, or limitation of warranties.
- 2873. — Cumulation and conflict of warranties.
- 2874. — Parties to warranties, privity, and third-party beneficiaries.

343. SALES**XI. ACTIONS.(Cont'd)**

- 2875. — Notice and opportunity to cure.
- 2876. — Waiver of breach.
- 2877. Remedies.
- 2878. — In general.
- 2879. — Rescission in general.
- 2880. — Monetary remedies and damages in general.
- 2881. — Price or value of goods in general.
- 2882. — Resale of goods and price thereof.
- 2883. — Procurement and price of substitute goods; “cover”.
- 2884. — Market price or value.
- 2885. — Additional or incidental damages; expenses.
- 2886. — Special, indirect, or consequential damages.
- 2887. — Lost profits.
- 2888. — Mitigation or reduction of loss.
- 2889. — Punitive or exemplary damages.
- 2890. — Exclusive, concurrent, and conflicting remedies; election.
- 2891. — Contractual modification or limitation of remedy.

XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.**(A) IN GENERAL.**

- 2901. In general.
- 2902. Particular cases and contexts in general.

(B) TRANSFEREES AND PURCHASERS IN GENERAL.

- 2911. In general.
- 2912. Extent of title or interest acquired from transferor in general.
- 2913. Subsequent transferees or purchasers in general.
- 2914. — In general.
- 2915. — From seller.
- 2916. — From buyer.

(C) GOOD-FAITH PURCHASERS.

- 2921. In general.
- 2922. Application of doctrine of market overt or caveat emptor.
- 2923. “Ordinary course of business” in general.

XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- 2924. Factors affecting whether transferor may pass good title.
- 2925. — In general.
- 2926. — Transferor with voidable title.
- 2927. — Goods delivered to or in possession of transferor.
- 2928. — Goods procured by transferor through fraud or deceit.
- 2929. — Method by which transferor paid for goods.
 - (1). In general.
 - (2). Cash, check, or credit.
 - (3). Bad or dishonored checks.
- 2930. Notice to purchaser.
- 2931. — In general.
- 2932. — Actual or constructive notice.
- 2933. — Duty to make investigation, and facts putting purchaser on inquiry.
- 2934. — Filing, recording, and registration.
- 2935. Consideration paid by purchaser.
- 2936. — In general.
- 2937. — Payment of value.
- 2938. — Pre-existing debt.
- 2939. Title and rights acquired by good-faith purchasers.
- 2940. Estoppel to assert title against good-faith purchasers.
- 2941. Equities and defenses against good-faith purchasers.
- 2942. Purchasers from good-faith purchasers.

(D) ENTRUSTED GOODS.

- 2951. In general.
- 2952. Entrustment to merchant.
- 2953. Particular goods.
- 2954. — In general.
- 2955. — Motor vehicles.
- 2956. — Art and jewelry.

(E) LOST, STOLEN, OR DAMAGED GOODS.

- 2961. In general.
- 2962. Particular goods.
- 2963. — In general.
- 2964. — Motor vehicles.
- 2965. — Art and jewelry.

(F) CREDITORS' RIGHTS AND LIABILITIES.

- 2971. In general.

343. SALES**XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)**

- 2972. Creditors of seller.
- 2973. Creditors of buyer.
- 2974. Rights and liabilities as to good-faith purchasers.

(G) ACTIONS.

- 2981. In general.
- 2982. Existence, nature, and form of action.
- 2983. Conditions precedent.
- 2984. Defenses; set-off and counterclaim.
- 2985. Time to sue; limitations and laches.
- 2986. Parties; standing.
- 2987. Pleading.
- 2988. Evidence.
- 2989. — In general.
- 2990. — Presumptions, inferences, and burden of proof.
- 2991. — Weight and sufficiency.
- 2992. Trial or hearing.
- 2993. — In general.
- 2994. — Questions of law or fact.
- 2995. — Instructions.
- 2996. — Verdict and findings.
- 2997. Judgment, order, or decree.
- 2998. Costs and fees.

XIII. CONDITIONAL SALES.

Secured transactions, particularly those within the scope of Article 9 of the Uniform Commercial Code, see SECURED TRANSACTIONS. Chattel mortgages, see CHATTEL MORTGAGES.

- 3001. In general; nature of sales on condition.
- 3002. What law governs.
- 3003. Statutory provisions.
- 3004. Conditional sales distinguished from other transactions.
- 3005. — In general.
- 3006. — Sale with reservation of lien.
- 3007. — Lease or contract of hiring.
- 3008. — Consignment for sale or other agency.
- 3009. Conditions which may be imposed.
- 3010. Contracts creating conditions on transfer of title in general.
- 3011. Necessity of writing.
- 3012. Form and contents of instrument.
- 3013. Execution and delivery of instrument.
- 3014. Affidavit accompanying instrument.

XIII. CONDITIONAL SALES.(Cont'd)

- 3015. Validity of conditions.
- 3016. Filing, recording, and registration.
- 3017. Construction and operation of conditions as between parties.
- 3018. — In general.
- 3019. — Conditions precedent in general.
- 3020. — Payment of price.
- 3021. — Conditions subsequent.
- 3022. Operation and effect of conditions as to third persons.
- 3023. — In general.
- 3024. — Filing, recording, and registration.
- 3025. — Purchasers from buyer in general.
- 3026. — Purchasers at judicial sale.
- 3027. — Creditors of or purchasers from seller.
- 3028. — Bona fide purchasers from buyer.
 - (1). In general.
 - (2). Filing, recording, and registration.
- 3029. — Creditors of buyer.
 - (1). In general.
 - (2). Filing, recording, and registration.
- 3030. Effect of assignment of contract.
- 3031. Performance or breach of conditions.
- 3032. Waiver of condition or of forfeiture for breach.
- 3033. — In general.
- 3034. — Delivery of property to buyer.
- 3035. — Taking new or additional security.
- 3036. — Enforcing or attempting to enforce payment of price.
- 3037. — Extension of time for payment.
- 3038. — Acceptance of payment after default.
- 3039. — Evidence and question for jury.
- 3040. Remedies of seller.
- 3041. — In general.
- 3042. — Nature, form and election of remedy.
- 3043. — Recovery of goods or proceeds thereof; actions for conversion.
 - (1). In general.
 - (2). Effect of recovery of judgment for price.
 - (3). Conditions precedent.
 - (4). Demand or tender.
 - (5). Defenses.
 - (6). Parties.

343. SALES**XIII. CONDITIONAL SALES.**(Cont'd)

- (7). Pleading and evidence.
- (8). Trial.
- (9). Damages, judgment or execution.
- (10). Effect of recovery of property in general.
- (11). Recovery of price after retaking property.
- (12). Liability to refund money paid by buyer.
- (13). Recovery for use of property.
- 3044. — Resale.
- 3045. — Recovery of price or value.
- 3046. — Breach of contract by buyer.
- 3047. — Lien and foreclosure thereof.
- 3048. — Against third persons.
 - (1). In general.
 - (2). Recovery of goods or proceeds thereof.
 - (3). — In general.
 - (4). — Conditions precedent and defenses.
 - (5). — Time for proceeding, and laches.
 - (6). — Parties.
 - (7). — Pleading and evidence.
 - (8). — Trial.
 - (9). — Amount and items of recovery.
 - (10). Conversion of or injury to goods and recovery of price or value.
- 3049. Remedies of buyer.
- 3050. Remedies of subsequent purchasers.
- 3051. Remedies of creditors.
- 3052. Criminal responsibility for removal or transfer of property.

344. SALVAGE**SUBJECTS INCLUDED**

Allowances made by law out of the value or proceeds of vessels or cargoes saved in whole or in part from danger or loss, to persons by whose assistance they were so saved, whether made by way of compensation or otherwise

Nature of the services for which, and grounds upon which, such allowances may be made
 What property may be subject thereto
 Who may be entitled to salvage and waiver or forfeiture thereof
 Amount to be awarded and apportionment thereof
 Lien for salvage and waiver, discharge, or extinguishment thereof
 Priorities of liens
 Proceedings for recovery of salvage

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty jurisdiction and procedure in general, see ADMIRALTY

- I. RIGHT TO COMPENSATION, ¶1–23.
- II. AMOUNT AND APPORTIONMENT, ¶24–38.
- III. LIEN AND RECOVERY, ¶39–52.

I. RIGHT TO COMPENSATION.

- 1. Nature and grounds in general.
- 2. What law governs.
- 3. Vessels and other property subject to salvage.
- 4. Derelict.
- 5. Existence and extent of peril.
- 6. Nature of service.
- 7. — In general.
- 8. — Peril at sea.
- 9. — Stranding.
- 10. — Fire.
- 11. — Sunken vessel or cargo.
- 12. — Recapture.
- 13. — Towage.
- 14. — Saving life.
- 15. Request for or acceptance of services.
- 16. Services rendered under contract.
- 17. Beneficial result of services.
- 18. Vessels and persons entitled to compensation.
- 19. Different sets of salvors, and successive salvors.
- 20. Vessels or persons contributing to peril.
- 21. Forfeiture by negligence or misconduct.
- 22. Liabilities of salvors for negligence or wrongful acts.
- 23. Persons and property liable.

347. SEALS

II. AMOUNT AND APPORTIONMENT.

- 24. Theory and purpose of remuneration.
- 25. Discretion of court as to amount.
- 26. Elements in determination of amount.
- 27. Amount awarded and computation in general.
- 28. Derelict.
- 29. Peril at sea.
- 30. Stranding.
- 31. Fire.
- 32. Sunken vessel or cargo.
- 33. Recapture.
- 34. Towage.
- 35. Services and expenses exceeding value of property saved.
- 36. Contracts as to compensation.
- 37. Apportionment among persons and property liable.
- 38. Apportionment among salvors.

III. LIEN AND RECOVERY.

- 39. Nature and incidents of lien.
- 40. Priority of lien.
- 41. Waiver, loss, or discharge of lien.
- 42. Suits for salvage.
- 42.1. — In general.
- 43. — Nature and form of remedy.
- 44. — Right of action and defenses.
- 45. — Jurisdiction.
- 45.5. — Time to sue and limitations.
- 46. — Parties.
- 47. — Pleading.
- 48. — Evidence.
- 49. — Trial or hearing.
- 50. — Decree and enforcement thereof.
- 51. — Appeal.
- 52. — Costs.

346. SCIRE FACIAS

SUBJECTS INCLUDED

Writs of scire facias for enforcement of obligations of record

Nature and scope of the remedy in general
Grounds of such writs and defenses thereto
To and against whom and on what matters of record they are allowed
Jurisdiction to grant and proceedings to obtain the writ
Issuance, requisites and validity of writs, service thereof, return thereto and proceedings thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Writs of scire facias and proceedings by motion, etc., or by action, to—
Continue or revive actions, see ABATEMENT AND REVIVAL
Enforce forfeited bail bonds and recognizances, see BAIL, RECOGNIZANCES
Foreclose mortgages or mechanics' liens, see MORTGAGES AND DEEDS OF TRUST, MECHANICS' LIENS
Revive judgments or executions, see JUDGMENT, CREDITORS' REMEDIES

- 1. Nature and scope of remedy.
- 2. Constitutional and statutory provisions.
- 3. Grounds.
- 4. Defenses.
- 5. Jurisdiction and authority to issue.
- 6. Time for issuance.
- 7. Parties.
- 8. Form and requisites of writ.
- 9. Service and return of writ.
- 10. Pleading.
- 11. Evidence.
- 12. Trial.
- 13. Judgment and enforcement thereof.
- 14. Appeal and error.
- 15. Costs.

347. SEALS

SUBJECTS INCLUDED

Signs and devices, representing parties to instruments in writing, attached or affixed to

347. SEALS

such instruments to attest their genuineness or their formal execution

Necessity, attaching or affixing, and sufficiency thereof in general

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Particular classes of instruments, seals affixed to, see **REAL PROPERTY CONVEYANCES** and other specific topics

Particular classes of persons, officers, or bodies corporate or politic, seals of, see **CORPORATIONS AND BUSINESS ORGANIZATIONS** and other specific topics

1. Necessity and use in general.
2. Statutory provisions.
3. Requisites and mode of impressing or affixing.
4. Adopting seal previously affixed.
5. Recital or other recognition in instrument.
6. Evidence as to seals.
- 6.5. Questions for jury.
7. Loss of seal.

348. SEAMEN

SUBJECTS INCLUDED

Employment, regulation, and protection of seamen

Mutual rights, duties, and liabilities of seamen and of owners, charterers, and masters of vessels on which they are employed

Liabilities to seamen of vessels, their cargoes and freight

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Labor relations involving seamen, see **LABOR AND EMPLOYMENT**

Longshoremen and similar workers, see **SHIPPING, WORKERS' COMPENSATION**

Masters of vessels, see **SHIPPING**

Pilots, see **PILOTS**

Salvage by seamen, see **SALVAGE**

1. Power to regulate and protect.
2. Who are seamen.
3. What law governs.
4. Statutory provisions.
5. Shipping commissioners.
6. Employment in general.
7. Shipping articles.
8. Lists, certificates, and return of crew.
9. Seaworthiness of vessel.
10. Provisions and supplies.
11. Medical treatment and maintenance of disabled seamen.
 - (1). In general.
 - (2). Duty of ship to carry physician or medical supplies.
 - (3). Duty of ship to deviate from course to procure medical assistance.
 - (4). Persons entitled.
 - (5). Fault or negligence of seaman or fellow servants.
 - (6). Extent and duration of liability.
 - (7). Subsequent conduct or conditions affecting liability.
 - (8). Mistaken diagnosis, neglect, or improper treatment.
 - (9). Actions.
12. Discharge.
13. Expenses of return to port of shipment.
14. Performance of services.
15. Wages.
 - 15.1. — In general.
16. — Right in general.
17. — Amount.
18. — Extra wages.
19. — Wages on discharge.
20. — Deductions and offsets.
21. — Forfeiture and fines.
 - (1). In general.
 - (2). Misconduct.
 - (3). Absence from vessel in general.
 - (4). Desertion.
 - (4.1). — In general.
 - (5). — On deviation from voyage.
 - (6). — Provocation, excuse, or justification.
 - (7). Requisites and necessity of entry on log book.
22. — Persons liable.
23. — Advances.

349. SEARCHES AND SEIZURES

- 24. — Payment.
 - 25. — Release.
 - 26. — Actions.
 - 27. — Lien.
 - (5). In general.
 - (1). Creation and existence in general.
 - (2). Persons entitled.
 - (3). Services in port.
 - (4). Services rendered on vessel in custody of law.
 - (5). Property subject.
 - (5.1). — In general.
 - (6). — Cargo or freight.
 - (7). — Vessels.
 - (8). Amount and extent.
 - (9). Priority.
 - (10). Assignment of claim or lien.
 - (11). Waiver, loss, or discharge.
 - (12). Enforcement.
 - 28. Share in earnings.
 - 29. Personal injuries.
 - (1). In general.
 - (2). Tools, machinery, appliances, and places for work.
 - (3). Fellow servants.
 - (4). Assumption of risk, contributory negligence, and division of damages.
 - (5). Action for damages in general.
 - (5.1). Nature and form of remedy.
 - (5.2). What law governs.
 - (5.3). Persons entitled to sue.
 - (5.4). Persons against whom suit may be brought.
 - (5.5). Jurisdiction and venue.
 - (5.6). Limitations and laches.
- See also LIMITATION OF ACTIONS.*
- (5.7). Parties.
 - (5.8). Process.
 - (5.9). Pleading in general.
 - (5.10). Issues, proof, and variance.
 - (5.11). Evidence in general.
 - (5.12). Presumptions and burden of proof.
 - (5.13). Admissibility of evidence.
 - (5.14). Weight and sufficiency of evidence.
 - (5.15). Trial in general.
 - (5.16). Questions for jury.
 - (5.17). Instructions.

- (5.18). Verdict and findings.
- (5.19). Judgment.
- (5.20). Lien.
- 30. Discipline and punishment.
- 31. Loss of clothing and effects.
- 32. Wages and effects of deceased seamen.
- 33. Penalties and forfeitures for violations of regulations.
- 34. Offenses.

349. SEARCHES AND SEIZURES**SUBJECTS INCLUDED**

Examination of persons or places for discovery of property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of an offense

Taking into legal custody such property or proofs, or property forfeited for violation of law

Nature and scope of such remedies in general

Constitutional and statutory provisions relating to such searches and seizures

In what cases and to and against whom and in respect of what property they are allowed

Jurisdiction over and proceedings to obtain searches or seizures

Issuance, requisites and validity of search warrants and warrants for seizure, etc.

Execution of warrants, making searches and seizures, proceedings to enforce seizures, and disposition of property seized

Liabilities for wrongfully procuring or making searches or seizures

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

[Note exceptions indicated below, as at ¶13]

Arrest, searches incidental to, see ARREST

Due process violations, see CONSTITUTIONAL LAW XXVII(G)23

Environmental protection of plants and wildlife, see ENVIRONMENTAL LAW ¶546

Evidence wrongfully obtained, see CRIMINAL LAW ¶392.1 et seq. and EVIDENCE ¶154

349. SEARCHES AND SEIZURES

Forfeiture for crime, grounds, see FORFEITURES and specific topics involving forfeitures

International law, operation as to seizures, see INTERNATIONAL LAW

Military cases decided by military courts, see MILITARY JUSTICE in the Federal Practice Digests

Particular objects, subjects, or purposes at search or seizure:

Automobile traffic offenses, search after stop or arrest, see AUTOMOBILES ¶349

Coast Guard searches of vessels, see SHIPPING ¶9

Customs or border searches, see CUSTOMS DUTIES ¶126

Electronic surveillance, see TELECOMMUNICATIONS ¶491 et seq

Fires, see FIRES ¶9

Fish and game, see FISH ¶16 and GAME ¶10

Food, see FOOD ¶24

Gambling and lotteries, see GAMING ¶60 and LOTTERIES ¶19

Internal Revenue searches, see INTERNAL REVENUE ¶5125–5128

Intoxicating liquors, see ALCOHOLIC BEVERAGES IV

Medicinal drugs and devices, cosmetics, and animal drugs, seizure of, see HEALTH ¶330

Narcotics, substances subject to abuse and addiction, and related paraphernalia, see CONTROLLED SUBSTANCES IV

National security foreign trade restrictions, see WAR AND NATIONAL EMERGENCY ¶509

Obscenity, see OBSCENITY VI

Parolees and probationers, see PARDON AND PAROLE ¶68 and SENTENCING AND PUNISHMENT IX(H)

Postal searches, see POSTAL SERVICE ¶47

Prison inmates, staff, and visitors, see PRISONS ¶134, 359, 385, 391

School searches, see EDUCATION ¶742–745

Workplace safety searches and inspections, see LABOR AND EMPLOYMENT ¶2600, 2661

I. IN GENERAL, ¶11–100.

II. WARRANTS, ¶101–140.

III. EXECUTION AND RETURN OF WARRANTS, ¶141–160.

IV. STANDING TO OBJECT, ¶161–170.

V. WAIVER AND CONSENT, ¶171–190.

VI. JUDICIAL REVIEW OR DETERMINATION, ¶191–202.

I. IN GENERAL.

11. In general.

12. Constitutional and statutory provisions.

13. What constitutes search or seizure.

Includes all cases, whatever the nature or purpose of the activity.

13.1. — In general.

14. — Taking samples of blood, or other physical specimens; handwriting exemplars.

15. — Taking items abandoned, voluntarily surrendered, or sold.

16. — Observation; items in plain view.

17. — Interior of premises, view from outside.

18. — Vehicles.

19. — Use of artificial light or visual aids.

20. — Aerial surveillance.

21. — Use of electronic devices; tracking devices or “beepers.”

22. — Scent; use of dogs.

23. Fourth Amendment and reasonableness in general.

24. Necessity of and preference for warrant, and exceptions in general.

25. Persons, places and things protected.

25.1. — In general.

26. — Expectation of privacy.

27. — Curtilage or open fields; yards and outbuildings.

28. — Abandoned, surrendered, or disclaimed items.

29. — Containers.

30. Items subject to seizure in general; nexus.

31. Persons subject to limitations; governmental involvement.

Includes all cases, whatever the nature or purpose of the activity, excepting school searches, for which see EDUCATION ¶742–745, and communication company interception, TELECOMMUNICATIONS ¶1440.

31.1. — In general.

32. — Application of federal standards to states and territories.

33. — Private persons.

349. SEARCHES AND SEIZURES**I. IN GENERAL.**(Cont'd)

- 34. — Carriers and communication companies.
- 35. — Foreign states or officers.
- 36. Circumstances affecting validity of warrantless search, in general.
- 36.1. — In general.
- 37. — Nature and source of information in general; suspicion or conjecture.
- 38. — Hearsay; informers; collective knowledge.
- 39. — Particular concrete cases.
- 40. Probable cause.
- 40.1. — In general.
- 41. — Hearsay; informers; collective knowledge.
- 42. Emergencies and exigent circumstances; opportunity to obtain warrant.
- 42.1. — In general.
- 43. — Pursuit.
- 44. — Presence of probable cause.
- 45. — Likely escape or loss of evidence.
- 46. Offense in officer's presence.
- 47. Plain view from lawful vantage point.
- 47.1. — In general.
- 48. — Inadvertency requirement.
- 49. — Nature of items seized; nexus.
- 50. — Closed containers; luggage.
- 51. — Use of artificial light or visual aids.
- 52. Arrested persons, search of, in general.
Excludes search incident to arrest, see ARREST
⊞71.1 and AUTOMOBILES ⊞349.
- 53. Scope, conduct, and duration of warrantless search.
- 53.1. — In general.
- 54. — Mode of entry; warning and announcement.
- 55. — Skin, strip, and body searches.
- 56. — Aerial surveillance.
- 57. Temporary investigative detention of property.
- 58. Inventory or booking search.
- 59. Vehicles, vessels, and aircraft in general.
- 60. Motor vehicles.
- 60.1. — In general.
- 61. — Expectation of privacy.
- 62. — Probable or reasonable cause.
- 63. — Plain view.
- 64. — Emergencies or exigencies.

I. IN GENERAL.(Cont'd)

- 65. — Scope; trunk, compartments, containers, and luggage.
- 66. — Inventory and impoundment; time and place of search.
- 67. Weapons; protective searches.
- 67.1. — In general.
- 68. — Vehicle searches.
- 69. — Plain view.
- 70. — Protective searches.
- 71. — Protective sweep; security check.
- 72. Airport and boarding searches.
- 73. Aliens and enemies.
- 74. Income tax returns.
- 75. Witnesses; subpoenas.
- 76. Corporations; offices and records.
- 77. Safe deposit boxes.
- 78. Samples and tests; identification procedures.
- 79. Administrative inspections and searches; regulated businesses.
- 80. Effect of illegal conduct; trespass.
Excludes admissibility of evidence obtained through illegal search, see CRIMINAL LAW ⊞392.1 et seq. and EVIDENCE ⊞154.
- 80.1. — In general.
- 81. — Invalid warrant.
- 82. — Curing illegality; justification by result.
- 83. Seizure proceedings against property forfeited.
- 84. Disposition of property seized.
- 85. Liability for wrongful search and seizure; actions.

II. WARRANTS.

- 101. In general.
- 102. Permissible subjects, objects, and purposes.
- 103. Authority to issue.
- 103.1. — In general.
- 104. — Impartial magistrate requirement.
- 105. Complaint, application or affidavit.
- 105.1. — In general.
- 106. — Persons who may apply or sign affidavit.
- 107. — Formal requirements.
- 108. — Necessity for writing; oral presentation or supplementation.
- 109. Proceedings for issuance.

349. SEARCHES AND SEIZURES**II. WARRANTS.(Cont'd)**

- 110. Telephone warrants; facsimile transmissions.
- 111. Factual showing, in general.
- 112. False, inaccurate or perjured information; disclosure.
- 113. Probable or reasonable cause.
- 113.1. — In general.
- 114. — Particular concrete applications.
- 115. Competency of information; hearsay.
- 115.1. — In general.
- 116. — Information from others in general.
- 117. — Reliability or credibility; corroboration.
- 118. — Anonymous or confidential informants.
- 119. — Citizens, victims, or officers.
- 120. — Legality of information.
- 121. Time for application or issuance; staleness.
- 121.1. — In general.
- 122. — Anticipatory warrants.
- 123. Form and contents of warrant; signature.
- 123.1. — In general.
- 124. — Particularity or generality and overbreadth in general.
- 125. — Objects or information sought.
- 126. — Places, objects, or persons to be searched.
- 127. — Error or misdescription.
- 128. Modification or vacation.
- 129. Administrative warrants.

III. EXECUTION AND RETURN OF WARRANTS.

- 141. In general.
- 142. Persons participating; place of search.
- 143. Manner of entry; warning and announcement.
- 143.1. — In general.
- 144. — Warrant directions; supporting showing.
- 145. Time of execution.
- 145.1. — In general.
- 146. — Night-time execution; warrant directions and supporting showing.
- 147. Scope of search.
- 147.1. — In general.

III. EXECUTION AND RETURN OF WARRANTS.(Cont'd)

- 148. — Places, persons, and things within scope of warrant.
- 149. — Objects in plain view; inadvertent discovery.
- 150. Return; inventory.

IV. STANDING TO OBJECT.

Includes all searches, whatever the nature or purpose of the activity, but excludes standing to object to the admission of evidence in criminal cases, see CRIMINAL LAW ¶392.41 and review of electronic surveillance, see TELECOMMUNICATIONS ¶1479, 1486.

- 161. In general.
- 162. Privacy interest or expectation, in general.
- 163. Possession crimes; automatic standing.
- 164. Particular concrete applications.
- 165. Automobile searches.

V. WAIVER AND CONSENT.

Includes all searches, excepting electronic surveillance, see TELECOMMUNICATIONS ¶1440, 1486, school searches, see EDUCATION ¶742-745, and searches of probationers, see SENTENCING AND PUNISHMENT ¶1990-1996, and parolees, see PARDON AND PAROLE ¶68, but excludes waiver by plea of guilty, see CRIMINAL LAW ¶273.4(2), and waiver or consent as affecting the admissibility of evidence in criminal cases, see CRIMINAL LAW ¶392.42.

- 171. In general.
- 172. Words or conduct expressing consent; acquiescence.
- 173. Persons giving consent.
- 173.1. — In general.
- 174. — Owners of property; hosts and guests.
- 175. — Landlords and tenants.
- 176. — Hotels and motels.
- 177. — Joint occupants.
- 178. — Family members.
- 179. Validity of consent.
- 179.1. — In general.
- 180. — Voluntary nature in general.
- 181. — Particular concrete applications.
- 182. — Prior official misconduct; misrepresentation, trick, or deceit.
- 183. — Knowledge of rights; warnings and advice.
- 184. — Custody, restraint, or detention issues.
- 185. Implied consent; airport, boarding, or entry searches.

349A. SECURED TRANSACTIONS

Includes consent implied in law, as from status, but excludes consent implied in fact, as from words or conduct, see ⚭172, above.

186. Scope and duration of consent; withdrawal.

VI. JUDICIAL REVIEW OR DETERMINATION.

Includes all searches, but excludes proceedings on motions to suppress evidence in criminal cases, see CRIMINAL LAW ⚭392.40 to 392.63.

191. In general; conclusiveness of warrant in general.
192. Presumptions and burden of proof.
- 192.1. — In general.
193. — Search under warrant.
194. — Consent, and validity thereof.
195. Weight and sufficiency of evidence.
- 195.1. — In general.
196. — Warrants, issuance and execution.
197. — Consent in general.
198. — Validity of consent.
199. Hearing; in camera inspection.
200. Scope of inquiry or review, in general.
201. Questions of law or fact.
202. Determination and relief.

349A. SECURED TRANSACTIONS

SUBJECTS INCLUDED

- Transactions intended to create a security interest in personal property in general and in particular those transactions within the scope of Article 9 of the Uniform Commercial Code
- Sale of accounts, contract rights, and chattel paper
- Nature, requisites, validity, construction, operation and effect of secured transactions
- Form and requisites of security agreements and execution and delivery thereof
- Perfection of security interests
- Rights, duties and liabilities of secured parties and debtors as between themselves and as to others; priorities
- Assignments of rights of secured parties
- Default and enforcement; redemption

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Accessions, see PROPERTY III(B)
- Commingling of goods, see CONFUSION OF GOODS
- Fixtures, rights and liabilities relating to, see PROPERTY VI
- Fraudulent transactions, including transactions fraudulent as to creditors or subsequent purchasers, see FRAUDULENT CONVEYANCES
- Non-Code transactions—particular secured transactions in jurisdictions not governed by the Uniform Commercial Code or entered into prior to the effective date of the Code, see ASSIGNMENTS, BAILMENT, CHATTEL MORTGAGES, PLEDGES, SALES
- Particular kinds of personal property, secured transactions relating to and governed by laws specially applicable thereto—
- Insurance policies, assignments of, see INSURANCE
- Railroad equipment, mortgages of, see RAILROADS
- Vessels, mortgages of, see SHIPPING
- Statutory liens generally, see AUTOMOBILES, BAILMENT, INTERNAL REVENUE, TAXATION, and other specific topics

- I. NATURE, REQUISITES, AND VALIDITY, ⚭1–80.
- (A) NATURE AND ESSENTIALS, ⚭1–40.
- (B) SECURITY AGREEMENTS, ⚭41–60.
- (C) VALIDITY, ⚭61–80.
- II. PERFECTION OF SECURITY INTEREST, ⚭81–110.
- III. CONSTRUCTION AND OPERATION, ⚭111–160.
- (A) IN GENERAL, ⚭111–130.
- (B) RIGHTS AS TO THIRD PARTIES AND PRIORITIES, ⚭131–160.
- IV. RIGHTS AND LIABILITIES OF PARTIES, ⚭161–180.
- V. ASSIGNMENTS OF SECURITY INTERESTS AND ASSIGNMENTS CREATING SECURITY INTERESTS, ⚭181–200.

349A. SECURED TRANSACTIONS

VI. DISCHARGE AND SATISFACTION,
 ⚡201–220.

VII. DEFAULT AND ENFORCEMENT,
 ⚡221–243.

I. NATURE, REQUISITES, AND VALIDITY.**(A) NATURE AND ESSENTIALS.**

1. Nature and essentials of secured transactions in general.
2. Security interest.
3. What law governs.
- 3.1. — In general.
4. — Accounts or contract rights, security interests in.
5. — General intangibles or goods normally used in more than one jurisdiction.
6. — Incoming goods already subject to a security interest.
7. — Certificate of title, property covered by.
8. Statutory provisions.
- 8.1. — In general.
9. — Retroactive operation.
10. Other transactions distinguished.
11. Property and rights subject to security interest.
- 11.1. — In general.
12. — Title or interest of debtor.
13. — After-acquired property.
14. Classification of goods.
- 14.1. — In general.
15. — Consumer goods.
16. — Equipment.
17. — Farm products.
18. — Inventory.
19. Debts or obligations which may be secured.
- 19.1. — In general.
20. — Future advances.
21. Parties.
22. Consideration.
23. Equitable secured transactions.
24. Absolute transfer as security.
25. Evidence as to character of transaction or instrument.
26. Questions for jury.

(B) SECURITY AGREEMENTS.

41. Necessity and sufficiency of writing in general.

I. NATURE, REQUISITES, AND VALIDITY.(Cont'd)

42. Designation of parties.
43. Description of collateral.
- 43.1. — In general.
44. — Errors or variations in description.
45. Description of land concerned.
46. Description of debts or liabilities secured.
47. Execution in general.
48. Signature.
49. Delivery and acceptance.
50. Evidence.
51. Questions for jury.

(C) VALIDITY.

61. Capacity and assent of parties in general.
62. Mistake.
63. Fraud, duress, or undue influence.
64. Illegality.
65. Estoppel, waiver, and ratification.
66. Evidence.
67. Questions for jury.

II. PERFECTION OF SECURITY INTEREST.

81. In general.
82. Necessity of filing.
- 82.1. — In general.
83. — Consumer goods and farm equipment, purchase money security interests.
84. — Accounts or contract rights, security interests in.
85. — Fixtures.
86. — Motor vehicles.
87. Notation on certificate of title.
88. Instruments, documents, and goods covered by documents, perfection of security interest.
89. Possession by secured party without filing.
90. Place of filing.
91. Time of filing.
92. Financing statement.
- 92.1. — In general.
93. — Addresses.
94. — Description of collateral.
95. — Signatures.
96. What constitutes filing.
97. Operation and effect of filing.

349A. SECURED TRANSACTIONS**II. PERFECTION OF SECURITY INTEREST.(Cont'd)**

- 98. Duration of filing; continuation statement.
- 99. Removal of debtor or collateral.
- 100. Termination statement.
- 101. Evidence.
- 102. Questions for jury.

III. CONSTRUCTION AND OPERATION.**(A) IN GENERAL.**

- 111. Application of general rules of construction.
- 112. Parties secured.
- 113. Debts or liabilities secured.
- 113.1. — In general.
- 114. — Future advances.
- 115. Property included.
- 115.1. — In general.
- 116. — After-acquired property.
- 117. Title and interests in collateral.
- 118. Evidence.
- 119. Questions for jury.

(B) RIGHTS AS TO THIRD PARTIES AND PRIORITIES.

- 131. Effect as to third persons in general.
- 132. Effect of liberty to use or dispose of collateral without accounting.
- 133. When security interest attaches.
- 134. When security interest is perfected.
- 135. Continuity of perfection.
- 136. Foreign security interests.
- 136.1. — In general.
- 137. — Interests perfected in foreign jurisdiction.
- 138. Priorities in general.
- 139. Unperfected security interests, priority over.
- 139.1. — In general.
- 140. — Lien creditors.
- 141. Buyers of goods, protection against perfected security interests.
- 142. Purchasers of chattel paper and nonnegotiable instruments.
- 143. Purchasers of negotiable instruments, documents of title, or securities.
- 144. Priority of liens arising by operation of law.

III. CONSTRUCTION AND OPERATION.(Cont'd)

- 145. Conflicting security interests, priorities among.
- 145.1. — In general.
- 146. — Purchase money security interests.
- 147. Agreements affecting priority.
- 148. Actions to determine and establish rights.
- 148.1. — In general.
- 149. — Evidence.
- 150. — Questions for jury.

IV. RIGHTS AND LIABILITIES OF PARTIES.

- 161. In general.
- 162. Statement of account or list of collateral.
- 163. Possession or control of collateral.
- 164. Use and disposition of collateral or proceeds.
- 164.1. — In general.
- 165. — Care of collateral and negligence of secured party.
- 166. — Alienability of rights of debtor.
- 167. — Judicial process.
- 168. — Secured party's rights in proceeds.
- 168.5. — Criminal liability of debtor.
- 169. Obligation of secured party on contract of debtor.
- 170. Conversion or injury to collateral.
- 171. Actions.

V. ASSIGNMENTS OF SECURITY INTERESTS AND ASSIGNMENTS CREATING SECURITY INTERESTS.

- 181. Requisites and validity in general.
- 182. Filing assignment.
- 183. Operation and effect.
- 184. Rights and liabilities of parties.
- 185. Equities and defenses against assignee.
- 185.1. — In general.
- 186. — Agreement not to assert defenses.
- 187. Modification of contract after notification of assignment.
- 188. Payment by debtor after assignment.
- 189. Actions by or against assignees.
- 190. Evidence.
- 191. Questions for jury.

VI. DISCHARGE AND SATISFACTION.

- 201. Payment of debt.

349A. SECURED TRANSACTIONS**VI. DISCHARGE AND SATISFACTION.(Cont'd)**

- 202. Tender.
- 203. Disposition of collateral.
- 204. Giving new security.
- 205. Release of collateral.
- 206. Filing release.
- 207. Effect of release or satisfaction.

VII. DEFAULT AND ENFORCEMENT.

- 221. Rights and remedies of secured party in general.
- 222. Default of debtor.
- 223. Election of remedies.
- 224. Waiver, estoppel, and abandonment of rights.
- 225. Restraining enforcement.
- 226. Actions on debt or liability secured.
- 227. Collection rights of secured party.
- 228. Possession by secured party.
- 229. Disposition of collateral.
- 229.1. — In general.
- 230. — Notice.
- 231. — Manner of disposition in general.
- 232. — Public or private sale.
- 233. — Purchase by secured party.
- 234. — Effect of disposition.
- 235. — Title and rights of purchaser.
- 236. — Setting aside.
- 237. — Application of proceeds.
- 238. — Compulsory disposition.
- 239. Acceptance of collateral as discharge of obligation.
- 240. Deficiency and personal liability.
- 241. Redemption of collateral.
- 242. Wrongful enforcement.
- 242.1. — In general.
- 243. — Damages and amount of recovery.

349B. SECURITIES REGULATION**SUBJECTS INCLUDED**

Federal and state regulations of the distribution of investment securities, of trading in and markets for such securities, and of investment companies and advisers

Securities commissions and officers and administrative powers and proceedings

Civil effects of violation of securities regulations and rights, liabilities, and remedies arising therefrom

Criminal offenses and prosecutions relating to violations of such regulations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Brokers' rights and obligations generally and as members of exchanges, see **BROKERS, EXCHANGES**

Corporate securities generally, subscription, issuance, and transfer, and security holders' rights and liabilities, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Public utility holding company regulation, see **PUBLIC UTILITIES**

Arbitration of disputes between stock exchange members and their customers, employees or fellow members, see **ALTERNATIVE DISPUTE RESOLUTION**

Liability for violation of stock exchange rules or for failure to enforce such rules, see **EXCHANGES**

I. FEDERAL REGULATION, ¶1-240.

(A) **IN GENERAL**, ¶1-10.

(B) **REGISTRATION AND DISTRIBUTION**, ¶11.10-34.

1. **REGISTRATION REQUIREMENT IN GENERAL**, ¶11.10-13.

2. **EXEMPT SECURITIES**, ¶14.10-17.

3. **EXEMPT TRANSACTIONS**, ¶18.10-24.

4. **REGISTRATION STATEMENTS**, ¶25.10-25.49.

5. **PROSPECTUSES AND COMMUNICATIONS**, ¶25.50-26.

6. **FRAUDULENT TRANSACTIONS**, ¶27.10-28.

7. **TRUST INDENTURES**, ¶29.10-29.14.

8. **FOREIGN TRANSACTIONS OR SECURITIES**, ¶30.10-34.

(C) **TRADING AND MARKETS**, ¶35.10-80.

1. **IN GENERAL**, ¶35.10-39.

2. **REGISTRATION AND REGULATION OF EXCHANGES, EXCHANGE MEMBERS, BROKERS, DEALERS AND DEAL-**

349B. SECURITIES REGULATION

- I. FEDERAL REGULATION—Cont'd
- (C) TRADING AND MARKETS—Cont'd
- ERS' ASSOCIATIONS,
 ⚭40.10–44.
3. MARGIN OR CREDIT, ⚭45.10–48.
4. PROXIES, ⚭49.10–51.
5. TAKE-OVER REGULATION,
 ⚭52.10–52.26.
- 5–A. TENDER OFFERS,
 ⚭52.30–52.50.
6. INSIDER REPORTING AND
 SHORT-TERM TRADING,
 ⚭53.10–59.
7. FRAUD AND MANIPULATION,
 ⚭60.10–66.
8. FOREIGN TRANSACTIONS OR
 SECURITIES, ⚭67.10–80.
- (D) SECURITIES AND EXCHANGE
 COMMISSION AND PROCEED-
 INGS, ⚭81–130.
- (E) REMEDIES, ⚭131–185.
1. IN GENERAL, ⚭131–170.
2. INJUNCTION, ⚭171–181.
3. RECEIVERSHIP, ⚭182–185.
- (F) LIQUIDATION OF BROKER-
 DEALERS; SECURITIES INVES-
 TOR PROTECTION CORPORA-
 TION, ⚭185.10–190.
- (G) OFFENSES AND PROSECUTIONS,
 ⚭191–210.
- (H) INVESTMENT COMPANIES,
 ⚭211–222.
- (I) INVESTMENT ADVISERS,
 ⚭223–240.
- II. STATE REGULATION, ⚭241–329.
- (A) IN GENERAL, ⚭241–290.
- (B) CIVIL EFFECTS OF VIOLATIONS,
 ⚭291–320.
- (C) OFFENSES AND PROSECUTIONS,
 ⚭321–329.

I. FEDERAL REGULATION.**(A) IN GENERAL.**

1. Nature and power to regulate.
2. Constitutional and statutory provisions.
 - 2.1. — In general.
 - 2.10. — Validity.
 - 2.20. — Purpose.
 - 2.30. — Construction and operation in
 general.
3. Administrative rules and regulations.
5. Securities, what are.
 - 5.10. — In general; investment contracts.
 - 5.11. — Particular interests.

I. FEDERAL REGULATION.(Cont'd)

- 5.12. — Evidence of indebtedness general-
 ly.
- 5.13. — Bills and notes; commercial pa-
 per, mortgages and bonds.
- 5.14. — Loan participation agreements.
- 5.15. — Bank accounts.
- 5.16. — Certificates of deposit.
- 5.17. — Brokerage accounts.
- 5.18. — Contracts for sale of goods.
- 5.19. — Real estate contracts; condomini-
 um interests.
- 5.20. — Commodity futures contracts; for-
 ward contracts.
- 5.21. — Employment contracts.
- 5.22. — Retirement or pension plan inter-
 ests.
- 5.23. — Franchise contracts.
- 5.24. — Distributorships; pyramid
 schemes.
- 5.25. — Corporate shares or stock.
 - (1). In general.
 - (2). Transfer of controlling interest;
 sale or acquisition of business.
 - (3). Stock warrants, options and sub-
 scription or other rights.
 - (4). Cooperative shares or rights.
- 5.26. — Partnership or joint venture inter-
 ests.
- 5.27. — Mineral rights or interests.
- 5.28. — Trusts.
- 5.29. — Government obligations.
- 5.30. — Insurance policies and annuities.
- 5.31. — Warehouse receipts.
- 5.32. — Profits, interest or participation in.
- 5.33. — Guaranties.
- 5.40. Pleading.
- 5.45. Evidence.
- 5.50. Questions of law or fact; jury questions.

(B) REGISTRATION AND DISTRIBUTION.**1. REGISTRATION REQUIREMENT IN GENERAL.**

- 11.10. In general.
- 11.11. Offer and sale; delivery.
- 11.12. Mergers and acquisitions.
- 11.13. Use of mails or instrumentalities of
 commerce.
- 11.14. Persons subject to regulation or liabili-
 ty.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 11.15. — In general.
- 11.16. — Aiders and abettors.
- 11.17. — Issuers.
- 11.18. — Underwriters or distributors.
- 11.19. — Control persons or groups and underwriters dealing with them.
- 11.20. — Brokers, dealers and their employees.
- 11.21. — Accountants, attorneys and other professionals.
- 11.22. Existence of private cause of action.
- 11.23. Persons entitled to sue or recover.
- 11.24. Purchasers or offerees.
- 11.25. Persons in pari delicto.
- 11.26. Grounds of or defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 11.27. — Scienter; absolute or strict liability.
- 11.28. — Good faith; advice of counsel.
- 11.29. — Cause of injury or loss.
- 11.30. — Estoppel or waiver.
- 11.31. — Other grounds or defenses.
- 11.40. Pleading.
- 11.45. Evidence.
- 11.50. Questions of law or fact; jury questions.

2. EXEMPT SECURITIES.

- 14.10. In general.
- 14.11. Banks, securities of.
- 14.12. Government obligations.
- 14.13. Short-term instruments.
- 14.14. Charitable organizations, securities of.
- 14.15. Savings and loans, cooperatives or similar organizations, securities of.
- 14.16. Carriers, securities of.
- 14.17. Certificates of receivers, trustees or debtors in possession.
- 14.18. Insurance policies and annuities.
- 14.19. Securities exchanged with existing holders.
- 14.20. Intra-state offerings.
- 14.21. Small entities, securities of.
- 14.30. Pleading.
- 14.35. Evidence.
- 14.40. Questions of law or fact; jury questions.

3. EXEMPT TRANSACTIONS.

- 18.10. In general.
- 18.11. Nonpublic or private offerings.
- 18.12. Number of offerees or purchasers.
- 18.13. Offerees' knowledge or sophistication; access to or need for information.
- 18.14. Multiple offerings; integration.
- 18.15. Redistribution by offerees.
- 18.16. Dealers' transactions.
- 18.17. Brokers' transactions executed on exchanges.
- 18.18. Small offerings.
- 18.20. Pleading.
- 18.25. Evidence.
- 18.30. Questions of law or fact; jury questions.

4. REGISTRATION STATEMENTS.

- 25.10. In general.
- 25.11. Effective date.
- 25.12. Fees.
- 25.13. Requisites in general.
- 25.14. Statement or certification by accountant, attorney or other professional.
- 25.15. Withdrawal or amendment.
- 25.16. Suspension of registration; stop orders.
- 25.17. False statements or omissions; accuracy.
- 25.18. — In general.
- 25.19. — Persons entitled to sue or recover.
- 25.20. — Persons liable.
 - (1). In general.
 - (2). Aiders and abettors.
 - (3). Accountants, attorneys or other professionals.
- 25.21. — Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 - (1). In general.
 - (2). Scienter, absolute or strict liability.
 - (3). Materiality; reliance.
 - (4). Good faith; due diligence or reasonable investigation.
 - (5). Cause of injury.
 - (6). Estoppel and waiver.
- 25.22. Operation and effect.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 25.25. Pleading.
 25.30. Evidence.
 25.35. Questions of law or fact; jury questions.
- 5. PROSPECTUSES AND COMMUNICATIONS.**
- 25.50. In general.
 25.51. Prospectus, what is.
 25.52. Requisites in general.
 25.53. Delivery.
 25.54. Withdrawal or amendment.
 25.55. False statements or omissions; accuracy.
 25.56. — In general.
 25.57. — Particular prospectuses or communications.
 25.58. — Fiscal or accounting data.
 25.59. — Earnings projections.
 25.60. — Persons entitled to sue or recover.
 25.61. — Persons liable.
 (1). In general.
 (2). Sellers.
 (3). Aiders and abettors.
 (4). Controlling persons.
 (5). Issuers.
 (6). Underwriters.
 (7). Brokers and dealers.
 (8). Directors and officers.
 (9). Accountants, attorneys and other professionals.
 25.62. — Grounds of and defenses to liability.
 Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 (1). In general.
 (2). Scierter; fault or due diligence.
 (3). Reliance.
 (4). Materiality.
 25.65. Pleading.
 Excludes requirement of particularity, see FEDERAL CIVIL PROCEDURE ¶636.
 25.70. Evidence.
 25.75. Questions of law or fact; jury questions.
- 6. FRAUDULENT TRANSACTIONS.**
- 27.10. In general.

I. FEDERAL REGULATION.(Cont'd)

- 27.11. Transactions subject to regulation or protection.
 27.12. — In general.
 27.13. — Use of mails or instrumentalities of commerce.
 27.14. — Offer and sale in general.
 27.15. — Exempt transactions.
 27.16. — Receipt of money or property.
 27.17. — Mergers and acquisitions.
 27.18. Fraudulent statements, omissions or conduct.
 27.19. — In general.
 27.20. — Omission or nondisclosure in general.
 27.21. — Brokers, dealers or salesmen, conduct of.
 27.22. — Accountants, attorneys or other professionals, conduct of.
 27.23. — Fiscal or accounting data.
 27.24. — Opinions, predictions, forecasts and recommendations.
 27.25. — Post-registration developments.
 27.26. — Price manipulation; fraud on the market.
 27.27. Existence of private cause of action.
 27.28. Persons entitled to sue or recover.
 27.29. — In general.
 27.30. — Buyers and sellers.
 27.31. — Privity.
 27.32. — Persons in pari delicto.
 27.33. Persons liable.
 27.34. — In general.
 27.35. — Sellers and offerors.
 27.36. — Aiders and abettors.
 27.37. Grounds of and defenses to liability.
 Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 27.38. — In general.
 27.39. — Scierter; knowledge or intention.
 27.40. — Good faith; belief in success; advice of counsel.
 27.41. — Reliance.
 27.42. — Materiality and causation.
 27.45. Pleading.
 Excludes requirement of particularity, see FEDERAL CIVIL PROCEDURE ¶636.
 27.50. Evidence.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

27.55. Questions of law or fact; jury questions.

7. TRUST INDENTURES.

29.10. In general.
 29.11. Securities subject to regulation; exemptions.
 29.12. Indentures.
 29.13. Trustees.
 29.14. Proceedings.

8. FOREIGN TRANSACTIONS OR SECURITIES.

30.10. In general.
 30.11. Transactions with foreigners or in foreign countries.
 30.12. Foreign securities.
 30.13. Pleading.
 30.14. Evidence.
 30.15. Questions of law or fact; jury questions.

(C) TRADING AND MARKETS.**1. IN GENERAL.**

35.10. In general.
 35.11. Transactions regulated in general.
 35.12. Purchase or sale.
 35.13. Transactions other than on exchange.
 35.14. Persons regulated or liable in general.
Includes generalities only; see also similar lines in more specific following sections.
 35.15. Controlling persons.
 35.16. Aiders and abettors.
 35.17. Existence of private cause of action.
 35.18. Persons entitled to sue or recover.
 35.19. Persons in pari delicto.
 35.20. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 35.21. Estoppel and waiver.
 35.22. Registration and listing of securities.
 35.23. Periodic reporting; accounting and reports.
Excludes reports of particular transactions, see 49.15, 52.15-52.26 and 53.11, and reports required of brokers and certain other persons, see 40.16.
 35.24. Contracts in violation of regulations.
 35.25. Pleading.
 35.26. Evidence.

I. FEDERAL REGULATION.(Cont'd)

35.27. Questions of law or fact; jury questions.

2. REGISTRATION AND REGULATION OF EXCHANGES, EXCHANGE MEMBERS, BROKERS, DEALERS AND DEALERS' ASSOCIATIONS.

Excludes liability for misconduct, see e.g., 11.20, 25.20(3), 25.61(7), 27.21 and 60.32(1-3).

40.10. In general.
 40.11. Exchange registration and regulation.
 40.12. Broker-dealers and associates, registration and regulation.
 40.13. Net capital requirement.
 40.14. Revocation, suspension, or other discipline.
 (1). In general.
 (2). Proceedings and review.
 40.15. Dealers' associations.
 40.16. Accounting and reporting requirements.

3. MARGIN OR CREDIT.

45.10. In general.
 45.11. Extension of credit by brokers and dealers.
 45.12. — In general.
 45.13. — Cash account transactions.
 (1). In general.
 (2). Time for payment; liquidation.
 (3). Delivery of securities.
 45.14. — Margin account transactions.
 (1). In general.
 (2). Margin calls and collateral; liquidation.
 45.15. — Transactions involving other special accounts.
 45.16. — Disclosure requirements.
 45.17. — Short sales.
 45.18. — Loan of securities.
 45.19. — Arranging credit.
 45.20. — Existence of cause of action for violation of regulations.
 45.21. — Persons entitled to sue or recover.
 45.22. — Persons in pari delicto.
 45.23. — Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 45.24. — Customers' liabilities.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 45.25. Transactions between dealers; specialist transactions.
- 45.26. Extension of credit by persons other than broker-dealers; banks.
- 45.27. New issues.
- 45.28. Pleading.
- 45.29. Evidence.
- 45.30. Questions of law or fact; jury questions.

4. PROXIES.

- 49.10. In general.
- 49.11. Solicitations subject to regulation.
- 49.12. Exemptions.
- 49.13. Requisites in general.
- 49.14. Annual reports.
- 49.15. Reporting requirements; participants required to file.
- 49.16. Contested solicitations; furnishing lists of holders or mailing proxies.
- 49.17. Proposals of security holders.
- 49.18. Voting proxies; conduct of elections.
- 49.19. False or fraudulent proxies; accuracy and completeness.
- 49.20. — In general.
- 49.21. — False or misleading statements; misrepresentation.
- 49.22. — Items to be disclosed; nondisclosure.
 - (1). In general.
 - (2). Materiality of omissions.
 - (3). Particular matters.
 - (4). Mergers, acquisitions or sales of assets.
 - (5). Stock purchases or repurchases.
 - (6). Fiscal or accounting data; valuation.
 - (7). Claims against corporation or others.
 - (8). Misconduct.
 - (9). Transactions between corporation and insiders or contestants.
 - (10). Estimates, projections or speculation.
- 49.23. — Existence of private cause of action.
- 49.24. — Persons entitled to sue or recover.
- 49.25. — Persons liable.

I. FEDERAL REGULATION.(Cont'd)

- (1). In general.
- (2). Aiders and abettors.
- (3). Directors or persons named in proxies.
- 49.26. — Grounds of and defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.

 - (1). In general.
 - (2). Scierter, knowledge or negligence; good faith.
 - (3). Materiality of violation; reliance and causation.
- 49.27. Effect of violation.
- 49.28. Pleading.
- 49.29. Evidence.
- 49.30. Questions of law or fact; jury questions.

5. TAKE-OVER REGULATION.

- 52.10. In general.
- 52.15. Reporting and filing requirements in general.
- 52.16. Persons or groups required to file.
- 52.17. Time.
- 52.18. Sufficiency; items to be disclosed.
- 52.19. Cure of misstatements or omissions; amendment.
- 52.20. Existence of private cause of action.
- 52.21. Persons entitled to sue or recover.
- 52.22. Persons liable.
- 52.23. Grounds of and defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 52.24. Pleading.
- 52.25. Evidence.
- 52.26. Questions of law or fact; jury questions.

5-A. TENDER OFFERS.

- 52.30. In general.
- 52.31. Transactions subject to regulation; "tender offer" defined.
- 52.32. Requisites in general.
- 52.33. Announcement of offer.
- 52.34. Tender and acceptance of offer.
- 52.35. Partial offers; proration.
- 52.36. Time.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 52.37. Fraudulent, manipulative or deceptive conduct.
- 52.38. — In general.
- 52.39. — Conduct of offeror.
 - (1). In general.
 - (2). Disclosures and omissions in general.
 - (3). Materiality.
 - (4). Particular matters.
 - (5). Plans or intent.
 - (6). Financial information; valuation.
 - (7). Statements prior to tender offer.
 - (8). Statements subsequent to tender offer.
 - (9). Cure of misstatements or omissions; amendment.
 - (10). Clarity of disclosure.
- 52.40. — Conduct of target corporation or its officers, directors or shareholders.
 - (1). In general.
 - (2). Disclosures and omissions.
- 52.41. Existence of private cause of action.
- 52.42. Persons entitled to sue or recover.
- 52.43. Persons liable.
- 52.44. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 52.45. — In general.
- 52.46. — Scienter; knowledge, intent or negligence.
- 52.47. — Reliance and causation.
- 52.48. Pleading.
- 52.49. Evidence.
- 52.50. Questions of law or fact; jury questions.

6. INSIDER REPORTING AND SHORT-TERM TRADING.

- 53.10. In general.
- 53.11. Reporting requirements.
- 53.12. Insider trading.
Excludes fraud or deceptive conduct by insiders, see ¶60.10 et seq.
- 53.13. — In general.
- 53.14. — Securities affected.
- 53.15. — Insiders subject to regulation.
- 53.16. — Transactions subject to regulation.

I. FEDERAL REGULATION.(Cont'd)

- (1). In general.
 - (2). Purchase and sale, existence and time of.
 - (3). Different classes of securities.
 - (4). Potential for abuse; realization of profit.
 - (5). Intent; use of or access to inside information.
 - (6). Involuntary sales or exchanges; rescission of voidable transactions.
 - (7). Sale or exchange pursuant or subsequent to merger or tender offer.
 - (8). Short sales.
 - (9). Gifts.
 - (10). Conversion or reclassification.
 - (11). Options, warrants and incentive plans.
- 53.17. — Exempt transactions.
 - (1). In general.
 - (2). Debts previously contracted.
 - (3). Dealers' transactions.
 - (4). Arbitrage transactions.
- 53.18. Persons entitled to sue or recover.
- 53.19. Estoppel and waiver.
- 53.20. Pleading.
- 53.21. Evidence.
- 53.22. Questions of law or fact; jury questions.

7. FRAUD AND MANIPULATION.

- 60.10. In general.
- 60.11. Transactions subject to regulation.
- 60.12. — In general.
- 60.13. — Transactions not on exchanges or organized markets.
- 60.14. — Exempt transactions.
- 60.15. — Connection with purchase or sale.
Excludes whether individual is a purchaser or seller, see ¶60.37.
- 60.16. — Use of mails or instrumentalities of commerce.
- 60.17. Manipulative, deceptive or fraudulent conduct.
- 60.18. — In general.
- 60.19. — Particular conduct.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 60.20. — Mismanagement or breach of fiduciary duty.
- 60.21. — Elimination of minority shareholders; “freeze outs”.
- 60.22. — Mergers, reorganizations or tender offers.
- 60.23. — “Going private” transactions.
- 60.24. — Partnership transactions.
- 60.25. — Fraud on the market; price manipulation.
- 60.26. — Purchase of securities during a distribution.
- 60.27. — Misrepresentation.
 - (1). In general.
 - (2). Prospectuses and proxies.
 - (3). Mergers and acquisitions.
 - (4). Facts or opinions.
 - (5). Forecasts, estimates, predictions or projections.
 - (6). Financial or periodic reports; accounting data and valuations.
 - (7). Statements in the media, press releases and financial reporting services.
- 60.28. — Nondisclosure; insider trading.
 - (1). In general.
 - (2). Duty to disclose or refrain from trading.
 - (2.1). — In general.
 - (3). — Buyers or sellers.
 - (4). — Corporate officers or directors; insiders.
 - (5). — Tippees.
 - (6). — Exchanges.
 - (7). — Lenders.
 - (8). Persons entitled to disclosure; public disclosure.
 - (9). Mode or time of disclosure.
 - (10). Matters to be disclosed.
 - (10.1). — In general.
 - (11). — Materiality.
 - (12). — Inside or nonpublic market information.
 - (13). — Particular matters.
 - (14). — Prospectuses and proxies.
 - (15). — Mergers, acquisitions, reorganizations or tender offers.
 - (16). — Correction or confirmation of prior statements or rumors.

I. FEDERAL REGULATION.(Cont'd)

- 60.29. — Release of inside or nonpublic market information; tipping.
- 60.30. — Conduct of accountants, attorneys or other professionals.
- 60.31. — Conduct of underwriters.
- 60.32. — Conduct of broker-dealers.
 - (1). In general.
 - (2). Nondisclosure or misrepresentation.
 - (3). Unauthorized or excessive trading; churning.
- 60.33. — Misleading statements in filed documents.
- 60.34. Existence of private cause of action.
- 60.35. Persons entitled to sue or recover.
- 60.36. — In general; privity.
- 60.37. — Buyers or sellers.

Excludes whether transaction is in connection with purchase or sale, see §60.15.
- 60.38. — Persons in pari delicto.
- 60.39. Persons liable.
- 60.40. — In general; control persons.
- 60.41. — Aiders and abettors.

Excludes accountants and attorneys, see §60.30, underwriters, see §60.31 and broker-dealers, see §60.32.
- 60.42. — Employers; respondeat superior.
- 60.43. Grounds of and defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 60.44. — In general.
- 60.45. — Scienter, intent, knowledge, negligence or recklessness.
 - (1). In general.
 - (2). Aiders and abettors.
 - (3). Accountants, attorneys, underwriters and brokers.
- 60.46. — Materiality of violation.

Excludes duty to disclose, see §60.28(11).
- 60.47. — Causation; existence of injury.
- 60.48. — Reliance.
 - (1). In general.
 - (2). Nondisclosure.
 - (3). Fraud on the market.
- 60.49. — Estoppel and waiver.
- 60.50. Pleading.

Includes heightened pleading standard for scienter under Private Securities Litigation Act; requirement of particularity in general, see FEDERAL CIVIL PROCEDURE §636.
- 60.51. — In general.
 - (1). In general.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)****(2). Scienter.**

- 60.52. — Connection with purchase and sale.
- 60.53. — Misrepresentation.
- 60.54. — Nondisclosure.
- 60.55. — Conduct of broker-dealers.
- 60.56. — Conduct of accountants or attorneys.
- 60.57. — Issues, proof and variance.
- 60.60. Evidence.
- 60.61. — In general; admissibility.
- 60.62. — Presumptions and burden of proof.
- 60.63. — Weight and sufficiency.
 - (1). In general.
 - (2). Misrepresentation, nondisclosure, and insider trading.
 - (3). Conduct of broker-dealers.
 - (4). Conduct of accountants and attorneys.
- 60.70. Questions of law or fact; jury questions.

8. FOREIGN TRANSACTIONS OR SECURITIES.

- 67.10. In general.
- 67.11. Transactions with foreigners or in foreign countries.
- 67.12. Foreign securities.
- 67.13. Pleading.
- 67.14. Evidence.
- 67.15. Questions of law or fact; jury questions.

(D) SECURITIES AND EXCHANGE COMMISSION AND PROCEEDINGS.

- 81. Securities and Exchange Commission in general.
- 82. Powers and functions in general; sanctions.
- 83. Jurisdiction of courts in advance of administrative action.
- 84. Proceedings in general.
- 85. Investigations.
- 86. Compelling testimony or production of evidence.
- 87. Evidence.
- 88. Judicial review and enforcement of decisions.
- 89. Scope of review.

(E) REMEDIES.**1. IN GENERAL.**

- 131. In general; nature and form of remedy.
- 132. Conditions precedent.
- 133. Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
- 134. Time to sue and limitations.
Whether state or federal law applies, see FEDERAL COURTS §3034. Computation of limitations period, see LIMITATION OF ACTIONS, particularly §100 for computation as affected by discovery of fraud and §104 for computation as affected by concealment of cause of action.
- 135. Parties and process.
- 136. Pleading.
- 142. Evidence in general.
- 143. Presumptions and burden of proof.
- 144. Weight and sufficiency of evidence.
- 147. Questions for jury.
- 148. Instructions.
- 149. Relief granted in general.
- 150. Insiders' profits, recovery of.
- 150.1. — In general.
- 151. — Cost basis.
- 152. — Maximizing profits; matching transactions.
- 153. — Interest.
- 154. Damages.
- 154.1. — In general.
- 155. — Actual or punitive damages.
- 156. Restitution or rescission; interest.
- 157. Costs and expenses; attorney fees.
- 157.1. — In general.
- 158. — Security for costs.

2. INJUNCTION.

- 171. Nature and grounds of injunction in general.
- 172. Registration and distribution regulation violations.
- 173. Proxy or take-over regulation violations.
- 174. Proceedings in general.
- 175. Evidence.
- 175.1. — In general.
- 176. — Presumptions and burden of proof.
- 177. — Weight and sufficiency.
- 178. Preliminary injunction.
- 178.1. — In general.
- 179. — Affidavits and other evidence.

349B. SECURITIES REGULATION**I. FEDERAL REGULATION.(Cont'd)**

- 180. Permanent injunction and other relief.
- 181. Violation and enforcement.

3. RECEIVERSHIP.

- 182. In general.

**(F) LIQUIDATION OF BROKER-DEALERS;
SECURITIES INVESTOR PROTECTION
CORPORATION.**

- 185.10. In general.
- 185.11. Members of Securities Investor Protection Corporation.
- 185.12. Appointment of trustee.
- 185.13. Powers and duties of trustee.
- 185.14. — In general; collection of assets.
- 185.15. — Completion of open contractual commitments.
- 185.16. Customers' claims; who are customers.
- 185.17. Claims of broker-dealers and other noncustomers.
- 185.18. Requisites of claims; time for filing.
- 185.19. Distribution and allocation of assets and funds; priority.
- 185.20. Compensation for services of trustee and others.
- 185.21. Proceedings.

(G) OFFENSES AND PROSECUTIONS.

- 191. Offenses in general.
- 192. Registration and distribution regulation violations in general.
- 193. Fraudulent transactions.
- 194. Criminal prosecutions in general.
- 195. Indictment and information.
- 196. Evidence.
- 196.1. — In general.
- 197. — Presumptions and burden of proof.
- 198. — Admissibility.
- 199. — Weight and sufficiency.
- 200. Questions for jury.

(H) INVESTMENT COMPANIES.

- 211. Investment company regulation in general.
- 212. Companies regulated and exemptions.
- 213. Registration.
- 214. Directors, officers, and trustees.

I. FEDERAL REGULATION.(Cont'd)

- 215. Advisers', management, and underwriting contracts.
- 216. Transactions of affiliated persons and underwriters.
- 217. Administrative proceedings and review.
- 218. Civil effects of violations; rights and liabilities.
- 219. Actions.
- 219.1. — In general.
- 219.5. — Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
- 220. — Evidence.
- 221. Injunction and receivership.
- 222. Offenses and prosecutions.

(I) INVESTMENT ADVISERS.

- 223. In general.
- 224. Administrative proceedings; injunction.

II. STATE REGULATION.**(A) IN GENERAL.**

- 241. Power to regulate.
- 242. What law governs.
- 243. Statutory provisions.
- 243.1. — In general.
- 244. — Validity.
- 245. — Purpose.
- 246. — Construction and operation in general.
- 247. Registration, qualification, or license requirement in general.
- 248. Securities requiring registration or qualification in general.
- 249. Particular securities.
- 249.1. — In general.
- 250. — Bills, notes, or evidence of indebtedness.
- 251. — Certificates of interest or participation.
- 252. — Investment contracts.
- 253. — Mineral interests.
- 254. — Sale of property in general.
- 255. Classification of securities.
- 256. Persons or companies affected.
- 256.1. — In general.
- 257. — Investment companies.
- 258. — Banks and trust companies.
- 259. — Foreign companies.

349B. SECURITIES REGULATION**II. STATE REGULATION.(Cont'd)**

- 260. — Broker-dealers, agents, and investment advisers.
- 261. — Owner selling his own securities.
- 262. Transactions covered.
- 262.1. — In general.
- 263. — Exchange of property.
- 264. — Consideration for loans.
- 265. — Joint venture or partnership transactions.
- 266. — Preincorporation subscriptions and sales to incorporators.
- 267. — Liquidation or reorganization.
- 268. — Isolated transactions.
- 269. — Private offerings; close corporations.
- 270. Officers or commissions and proceedings in general.
- 271. Appointment of process agent.
- 272. Furnishing information, statement, or notice.
- 273. Bonds or other security; deposit in escrow.
- 274. Investigations.
- 275. Judicial review.
- 276. Construction and effect of registration or license; conditions.
- 277. Renewal, modification, revocation, or suspension.
- 278. Fraudulent or other prohibited practices.

(B) CIVIL EFFECTS OF VIOLATIONS.

- 291. Rights, liabilities, and remedies.
- 291.1. — In general.
- 292. — Validity and enforcement of contract or transaction in general.
- 293. — Void or voidable contracts or transactions.
- 294. — Stock subscriptions.
- 295. — Notes given for purchase price.
- 296. — Validity of securities and holders' rights and liabilities.
- 297. — Recovery for fraud.
- 298. — Recovery for services.
- 299. — Rescission and recovery of consideration.
- 300. — Persons who may assert illegality in general.
- 301. — Persons in pari delicto, estoppel, and ratification.

II. STATE REGULATION.(Cont'd)

- 302. — Persons liable.
- 303. Actions.
- 303.1. — In general.
- 304. — Conditions precedent.
- 305. — Limitations and laches.
See also LIMITATION OF ACTIONS.
- 306. — Pleading.
- 307. — Evidence in general.
- 308. — Weight and sufficiency of evidence.
- 309. — Trial and relief.
- 310. Injunction and receivership.
- 311. Liabilities on bonds.
- 311.1. — In general.
- 312. — Actions.

(C) OFFENSES AND PROSECUTIONS.

- 321. Offenses in general.
- 322. Unauthorized issuance, sale, or offer.
- 323. Fraud or misrepresentation.
- 324. Persons liable.
- 325. Criminal prosecutions.
- 325.1. — In general.
- 326. — Indictment, information, or complaint.
- 327. — Evidence in general.
- 328. — Weight and sufficiency of evidence.
- 329. — Trial, judgment, and review.

350. SEDUCTION**SUBJECTS INCLUDED**

- Enticement of an unmarried woman by a man to commit unlawful sexual intercourse with him
- Nature and extent of right to recover damages therefor, of a person entitled to the services of such woman, or of the woman herself, or her parent, etc.
- Actions for such damages
- Criminal responsibility for such seduction and prosecution and punishment thereof as a public offense

350H. SENTENCING AND PUNISHMENT**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Abduction, offense of, see **CRIMINAL LAW**
 ⌋45.10

Alienation of affections of husband or wife,
 see **MARRIAGE AND COHABITATION**

Breach of promise of marriage, effect of seduction in actions for, see **MARRIAGE AND COHABITATION II(B)**

Criminal conversation, see **MARRIAGE AND COHABITATION**

I. **CIVIL LIABILITY**, ⌋1–26.

II. **CRIMINAL RESPONSIBILITY**,
 ⌋29–54.

I. CIVIL LIABILITY.

1. Nature and elements of cause of action in general.
2. Statutory provisions.
3. Grounds of action.
4. — In general.
5. — Acts or conduct constituting seduction.
6. — Right of action of woman seduced.
7. — Right of action of parent or other relative or guardian.
8. — Loss of services or other injury caused.
9. Defenses.
10. Abatement or survival on death of party.
11. Persons entitled to sue.
12. Nature and form of remedy.
13. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
14. Parties and persons liable.
15. Process and appearance.
16. Pleading.
17. Evidence.
18. Damages.
19. — In general.
20. — Elements of compensation.
21. — Exemplary.
22. — Amount awarded.
23. Trial.
- 23.1. — In general.
24. — Questions for jury.
25. — Instructions.
26. — Verdict and findings.

II. CRIMINAL RESPONSIBILITY.

29. Nature and elements of offense in general.
30. Statutory provisions.
31. Capacity to commit offense.
32. Persons against whom offense may be committed.
33. Acts or conduct constituting seduction.
34. Promise of marriage.
35. Defilement of female in care, custody, or employment of accused.
36. Defenses.
37. Indictment and information.
38. Evidence.
- 38.1. — In general.
39. — Presumptions and burden of proof.
40. — Admissibility in general.
41. — Age of female.
42. — Character of female.
43. — Promise of marriage.
44. — Personal relations of parties.
45. — Weight and sufficiency in general.
46. — Corroboration.
47. Trial.
- 47.1. — In general.
49. — Questions for jury.
50. — Instructions.
 - (1). In general.
 - (2). Corroboration of female.
 - (3). Chastity of female.
 - (4). Means used to accomplish seduction.
51. — Verdict.
52. Appeal and error.
53. Sentence and punishment.
54. Bonds for discharge from prosecution.

**350H. SENTENCING AND
PUNISHMENT****SUBJECTS INCLUDED**

Punishment of crime in general

Factors considered in determining punishment

350H. SENTENCING AND PUNISHMENT

Sentencing proceedings
 Evidence admissible at sentencing
 Construction and operation of sentences imposed
 Double punishment and sentencing for different offenses in the same transaction
 Sentencing guidelines and their application
 Matters related to habitual offenders
 Cruel and unusual punishment
 The death penalty
 Probation and suspension of sentence
 Intervention, diversion, and other alternative dispositions
 Restitution
 Reconsideration and modification of sentence

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arguments of counsel, see **CRIMINAL LAW**
 Bail and recognizance, see **BAIL**
 Commitment or treatment of addicts, see **CHEMICAL DEPENDENTS**
 Confinement after acquittal or other disposition on ground of mental disorder or insanity, see **MENTAL HEALTH**
 Confrontation of witnesses, see **CRIMINAL LAW**
 Contempt of court, see **CONTEMPT**
 Convicts, disabilities and regulation, see **CONVICTS**
 Costs in criminal prosecutions, see **COSTS**
 Counsel, adequacy of representation, see **CRIMINAL LAW**
 Doctrines of double jeopardy, former jeopardy, autrefois acquit, and autrefois convict, see **DOUBLE JEOPARDY**
 Driver's license suspension and revocation, see **AUTOMOBILES**
 Due process, equal protection, and other constitutional rights and privileges of accused, see also **CONSTITUTIONAL LAW**
 Ex post facto laws, see also **CONSTITUTIONAL LAW XXIII**
 Extent of punishment for particular offenses, except where guidelines are involved, see also **ARSON, ASSAULT AND BATTERY, BURGLARY**, and other particular topics
 Extradition of fugitives, see **EXTRADITION AND DETAINERS**

Fines in general, see **FINES**
 Fines for particular offenses, see **ARSON, ASSAULT AND BATTERY**, and other particular topics
 Forfeitures, see **FORFEITURES, CONTROLLED SUBSTANCES, WEAPONS**, and other particular topics
 Guilty but mentally ill, confinement after verdict, see **MENTAL HEALTH**
 Instructions on punishment, see **CRIMINAL LAW** and other particular topics
 Judges, qualification and recusal, see **JUDGES**
 Judgments in criminal proceedings, see **CRIMINAL LAW**
 Jury trial, right to and waiver, see **JURY**
 Juvenile offenders, special rules and proceedings, see also **INFANTS**
 Military cases decided by military courts, see **MILITARY JUSTICE**
 Money recoverable under statutes imposing payment as punishment for violation, see **PENALTIES**
 New trial, application to trial courts for, see **CRIMINAL LAW**
 Pardon, commutation of sentence, and parole, see **PARDON AND PAROLE**
 Post-conviction relief and vacation of judgment, see **CRIMINAL LAW**
 Penal statutes in general, construction of, see **CRIMINAL LAW** ¶12.7, **STATUTES** ¶1316
 Prisons, jails, penitentiaries, and reformatories, establishment, maintenance, and conditions of confinement, including confinement of pretrial detainees, see **PRISONS, INFANTS, CIVIL RIGHTS**
 Public office, eligibility for after criminal conviction, see **PUBLIC EMPLOYMENT**, and other particular topics
 Reduction of terms of imprisonment by good conduct, see **PRISONS**
 Review on appeal, writ of error, or certiorari, see also **CRIMINAL LAW**
 Security or order to keep the peace, see **PROTECTION OF ENDANGERED PERSONS**
 Sex offenders, commitment, registration and community notification, see **MENTAL HEALTH**
 Witnesses, except for expert witnesses, and their examination, see **WITNESSES**

350H. SENTENCING AND PUNISHMENT

Work release, see CONVICTS

Writ of habeas corpus, see HABEAS CORPUS

I. PUNISHMENT IN GENERAL, ¶1–146.

- (A) IN GENERAL, ¶1–23.
- (B) EXTENT OF PUNISHMENT IN GENERAL, ¶30–39.
- (C) FACTORS OR PURPOSES IN GENERAL, ¶40–61.
- (D) FACTORS RELATED TO OFFENSE, ¶65–89.
- (E) FACTORS RELATED TO OFFENDER, ¶90–117.
- (F) FACTORS RELATED TO STATUS OF VICTIM, ¶120–127.
- (G) DUAL USE, ¶135–146.

II. SENTENCING PROCEEDINGS IN GENERAL, ¶200–480.

- (A) IN GENERAL, ¶200–211.
- (B) JURISDICTION, ¶225–229.
- (C) PRELIMINARY PROCEEDINGS IN GENERAL, ¶235–249.
- (D) MENTAL ILLNESS OR DISORDER OF DEFENDANT, ¶250–272.
- (E) PRESENTENCE REPORT, ¶275–301.
- (F) EVIDENCE, ¶302–323.
- (G) HEARING, ¶325–385.
- (H) PROCEEDINGS AFTER GUILTY OR NOLO CONTENDERE PLEA, ¶400–424.
- (I) EXECUTION OF SENTENCE, ¶460–467.
- (J) STAY OF EXECUTION OF SENTENCE, ¶475–480.

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES, ¶500–648.

- (A) IN GENERAL, ¶500–540.
- (B) CONSECUTIVE OR CUMULATIVE SENTENCES, ¶545–621.
 - 1. IN GENERAL, ¶545–548.
 - 2. PARTICULAR OFFENSES, ¶555–578.
 - 3. FACTORS AND PURPOSES, ¶585–612.
 - 4. DUAL USE, ¶620–621.
- (C) ACCOMMODATION TO PRIOR OR SUBSEQUENT SENTENCE, ¶630–637.
- (D) DISPOSITION, ¶642–648.

IV. SENTENCING GUIDELINES, ¶650–998.

- (A) IN GENERAL, ¶650–665.
- (B) OFFENSE LEVELS, ¶666–738.
 - 1. IN GENERAL, ¶666–678.

IV. SENTENCING GUIDELINES—Cont'd

(B) OFFENSE LEVELS—Cont'd

- 2. FACTORS PECULIAR TO PARTICULAR OFFENSES, ¶679–706.
- 3. FACTORS APPLICABLE TO SEVERAL OFFENSES, ¶720–738.

(C) ADJUSTMENTS, ¶750–765.

- 1. IN GENERAL, ¶750.
- 2. FACTORS INCREASING OFFENSE LEVEL, ¶751–762.
- 3. FACTORS DECREASING OFFENSE LEVEL, ¶763–765.

(D) MULTIPLE OFFENSES OR COUNTS, ¶770–777.

(E) PRIOR OR SUBSEQUENT MISCONDUCT, ¶779–799.

(F) DEPARTURES, ¶800–871.

- 1. IN GENERAL, ¶800–809.
- 2. UPWARD DEPARTURES, ¶814–848.
- 3. DOWNWARD DEPARTURES, ¶850–871.

(G) DUAL OR DUPLICATIVE USE, ¶900–909.

(H) PROCEEDINGS, ¶930–998.

- 1. IN GENERAL, ¶930–948.
- 2. EVIDENCE, ¶960–982.
- 3. HEARING, ¶985–998.

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED, ¶1000–1182.

- (A) IN GENERAL, ¶1000–1006.
- (B) SUFFICIENCY, ¶1010–1073.
 - 1. IN GENERAL, ¶1010–1026.
 - 2. PUNISHMENT, ¶1050–1073.
- (C) CONSTRUCTION, ¶1100–1140.
 - 1. IN GENERAL, ¶1100–1109.
 - 2. PUNISHMENT, ¶1115–1140.
- (D) CREDITS, ¶1155–1182.

VI. HABITUAL AND CAREER OFFENDERS, ¶1200–1426.

- (A) IN GENERAL, ¶1200–1219.
- (B) OFFENSES SUBJECT TO ENHANCEMENT, ¶1230–1245.
- (C) OFFENSES USABLE FOR ENHANCEMENT, ¶1250–1285.
 - 1. IN GENERAL, ¶1250–1263.
 - 2. OFFENSES IN OTHER JURISDICTIONS, ¶1270–1285.
- (D) CONVICTIONS AND DISPOSITIONS USABLE FOR ENHANCEMENT, ¶1286–1292.
- (E) TIME OF PRIOR OFFENSE OR CONVICTION, ¶1295–1298.
- (F) ORDER OF OFFENSES AND CONVICTIONS, ¶1299–1304.

350H. SENTENCING AND PUNISHMENT**VI. HABITUAL AND CAREER OFFENDERS—Cont'd**

- (G) NUMBER OF PRIOR ADJUDICATIONS, ⚭1305–1309.
- (H) DEFECTS IN PRIOR ADJUDICATION, ⚭1310–1328.
- (I) SUBSEQUENT CIRCUMSTANCES AFFECTING PRIOR ADJUDICATION, ⚭1330–1344.
- (J) DUAL USE, ⚭1345–1352.
- (K) PROCEEDINGS, ⚭1355–1399.
- (L) PUNISHMENT, ⚭1400–1426.

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL, ⚭1430–1607.

- (A) IN GENERAL, ⚭1430–1439.
- (B) LAW ENFORCEMENT ACTIVITIES, ⚭1440–1444.
- (C) CRIMINAL LIABILITY, ⚭1450–1455.
- (D) PROSECUTIONS, ⚭1460–1469.
- (E) EXCESSIVENESS AND PROPORTIONALITY OF SENTENCE, ⚭1480–1513.
- (F) METHODS OF PUNISHMENT, ⚭1519–1526.
- (G) CONFINEMENT, ⚭1527–1531.
- (H) CONDITIONS OF CONFINEMENT, ⚭1532–1554.
- (I) DEPRIVATION OF PROPERTY, ⚭1555–1568.
- (J) ALTERNATIVES TO INCARCERATION, ⚭1570–1576.
- (K) CIVIL MATTERS, ⚭1580–1602.
- (L) JUVENILE JUSTICE, ⚭1605–1607.

VIII. THE DEATH PENALTY, ⚭1610–1799.

- (A) IN GENERAL, ⚭1610–1634.
- (B) PERSONS ELIGIBLE, ⚭1640–1644.
- (C) FACTORS AFFECTING IMPOSITION IN GENERAL, ⚭1645–1661.
- (D) FACTORS RELATED TO OFFENSE, ⚭1665–1686.
- (E) FACTORS RELATED TO OFFENDER, ⚭1700–1721.
- (F) FACTORS RELATED TO STATUS OF VICTIM, ⚭1725–1735.
- (G) PROCEEDINGS, ⚭1736–1794.
 - 1. IN GENERAL, ⚭1736–1748.
 - 2. EVIDENCE, ⚭1750–1773.
 - 3. HEARING, ⚭1774–1782.
 - 4. DETERMINATION AND DISPOSITION, ⚭1783–1790.
 - 5. MENTAL ILLNESS OR DISORDER, ⚭1791–1794.
- (H) EXECUTION OF SENTENCE OF DEATH, ⚭1795–1799.

IX. PROBATION AND RELATED DISPOSITIONS, ⚭1800–2041.**IX. PROBATION AND RELATED DISPOSITIONS—Cont'd**

- (A) IN GENERAL, ⚭1800–1828.
- (B) GROUNDS AND CONSIDERATIONS IN GENERAL, ⚭1830–1834.
- (C) FACTORS RELATED TO OFFENSE, ⚭1835–1865.
- (D) FACTORS RELATED TO OFFENDER, ⚭1870–1888.
- (E) PROCEEDINGS FOR IMPOSITION, ⚭1890–1923.
- (F) DISPOSITION OF OFFENDER, ⚭1930–1953.
- (G) CONDITIONS OF PROBATION, ⚭1960–1988.
- (H) SEARCHES AND SEIZURES, ⚭1990–1996.
- (I) REVOCATION, ⚭2000–2041.
 - 1. IN GENERAL, ⚭2000–2001.
 - 2. FACTORS AFFECTING REVOCATION, ⚭2002–2006.
 - 3. PROCEEDINGS, ⚭2009–2031.
 - 4. DISPOSITION OF OFFENDER, ⚭2032–2041.

X. ALTERNATIVE DISPOSITIONS, ⚭2045–2096.

- (A) IN GENERAL, ⚭2045–2057.
- (B) MATTERS AFFECTING ELIGIBILITY, ⚭2058–2068.
- (C) PROCEEDINGS, ⚭2070–2079.
- (D) TERMS AND CONDITIONS, ⚭2082–2085.
- (E) TERMINATION, ⚭2086–2094.
- (F) DISCHARGE, ⚭2095–2096.

XI. RESTITUTION, ⚭2100–2217.

- (A) IN GENERAL, ⚭2100–2110.
- (B) PERSONS ENTITLED TO RESTITUTION, ⚭2120–2125.
- (C) FACTORS RELATED TO OFFENDER, ⚭2130–2138.
- (D) COMPENSABLE LOSSES, ⚭2141–2159.
- (E) AMOUNT, ⚭2160–2179.
- (F) PROCEEDINGS, ⚭2180–2201.
- (G) PAYMENT, ⚭2205–2217.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE, ⚭2220–2335.

- (A) IN GENERAL, ⚭2220–2241.
- (B) GROUNDS AND CONSIDERATIONS, ⚭2250–2265.
- (C) PROCEEDINGS, ⚭2270–2318.
 - 1. IN GENERAL, ⚭2270–2285.
 - 2. EVIDENCE, ⚭2286–2301.
 - 3. HEARING AND DETERMINATION, ⚭2302–2318.
- (D) DISPOSITION, ⚭2325–2335.

350H. SENTENCING AND PUNISHMENT**I. PUNISHMENT IN GENERAL.****(A) IN GENERAL.**

1. In general.
2. Authority to impose.
3. Persons subject to punishment in general.
4. Necessity of conviction.
5. Constitutional, statutory, and regulatory provisions.
6. — In general.
7. — Purpose.
8. — Validity.
9. — Amendment.
10. — Repeal.
11. — Construction.
12. — Time of taking effect.
13. Retroactive operation.
14. — In general.
15. — Law in effect at time of crime as controlling.
16. — Particular statutes.
17. — Amendment or other modification.
 - (1). In general.
 - (2). Increase in punishment.
 - (3). Reduction or amelioration of punishment.
18. Adoption of code.
19. Choice or election of statute to be applied.
20. — In general.
21. — Effect of ambiguity or uncertainty.
22. — Election by defendant.
23. — Election by prosecution.

(B) EXTENT OF PUNISHMENT IN GENERAL.

30. In general.
31. Discretion of court.
Effect of statute, see [§35](#).
32. What is excessive punishment in general.
33. Effect of statute or regulatory provision.
34. — In general.
35. — Discretion of court.
36. Policy considerations.
37. Necessity that punishment be individualized.
38. Proportionality to offense.
39. Uniform and disparate treatment of offenders.

(C) FACTORS OR PURPOSES IN GENERAL.

40. In general.
41. Deterrence.
42. Protection of society.
43. Denunciation of crime.
44. Retribution.
45. Rehabilitation and reform.
46. Passion and prejudice.
47. Race and ethnicity.
Racial prejudice as motive for crime, see [§70](#).
48. Religious, moral, and philosophical matters.
49. Sympathy and mercy.
50. Facts and circumstances of particular case in general.
51. Factors extrinsic to statute or guideline in general.
52. Vindictiveness in general.
Vindictiveness in response to exercise of rights, see [§115](#).
53. Aggravating circumstances in general.
54. Mitigating circumstances in general.
55. Comparison with dispositions in other cases.
56. Sentence or disposition of co-participant or codefendant.
57. Opinions and recommendations of officials and others.
58. Manner and effect of weighing or considering factors.
59. Effect of applying invalid factor.
60. Plea bargain or other agreement.
Validity and construction of plea bargain, see CRIMINAL LAW [§273.1\(2\)](#).
61. Determinations based on multiple factors.

(D) FACTORS RELATED TO OFFENSE.

65. In general.
66. Nature, degree or seriousness of offense.
67. Extent of offender's participation.
68. Intent, planning, premeditation.
69. Motive.
70. Racial or other prejudice as motive.
71. Pecuniary motive.
72. Justification for conduct.
73. Victim's participation or provocation.
74. Coercion or duress.
75. Use of force or violence.
76. Weapons.
Application of sentencing guidelines, see [§726](#).

350H. SENTENCING AND PUNISHMENT**I. PUNISHMENT IN GENERAL.**(Cont'd)

- 77. — In general.
- 78. — What constitutes a weapon.
See also ASSAULT AND BATTERY §131 and *WEAPONS* §109 et seq.
- 79. — Possession and carrying.
- 80. — Use.
- 81. — Accomplices and co-participants.
- 82. Brutality or cruelty in commission of offense.
- 83. Endangering public or bystanders.
- 84. Degree of harm caused by offense in general.
- 85. Physical injury and degree thereof.
- 86. Mental or psychological injury or trauma.
- 87. Harm to third persons or to institutions.
- 88. Attempt or other inchoate offense.
- 89. Other offense-related considerations.

(E) FACTORS RELATED TO OFFENDER.

- 90. In general.
- 91. Gender.
- 92. Offender's character in general.
- 93. Other offenses, charges, misconduct.
- 94. — In general.
- 95. — Nature, degree, or seriousness of other misconduct.
- 96. — Misconduct in same transaction or incident.
- 97. — Similarity to present offense.
- 98. — Arrests, charges, or unadjudicated misconduct.
- 99. — Time of other offense or misconduct.
- 100. — Defects in prior adjudication.
- 101. — Juvenile record.
- 102. — Lack of significant prior record.
- 103. Mental illness or disorder.
- 104. Emotional disturbance at time of offense.
- 105. Substance abuse and addiction.
- 106. Intoxication or drug impairment at time of offense.
- 107. Intellectual disabilities.
- 108. Age.
Youthful offender status, see INFANTS §69.
- 109. Physical illness or disability.
- 110. Childhood or familial background.
- 111. Existing social ties and responsibilities.
- 112. Actual or potential rehabilitation.

I. PUNISHMENT IN GENERAL.(Cont'd)

- 113. Perjury or other untruthfulness.
- 114. Remorse, acceptance of responsibility, and cooperation.
- 115. Exercise of rights.
 - (1). In general.
 - (2). Right to silence.
 - (3). Right to stand trial.
 - (4). Right to appeal or other review.
- 116. Dangerousness.
- 117. Other offender-related considerations.

(F) FACTORS RELATED TO STATUS OF VICTIM.

- 120. In general.
- 121. Vulnerability.
- 122. Age.
- 123. Economic and social status.
- 124. Public official or employee.
- 125. Witnesses.
- 126. Victim's family status.
- 127. Relationship between defendant and victim.

(G) DUAL USE.

- 135. In general.
- 136. Facts inherent in conduct constituting offense.
- 137. Elements of offense.
- 138. — In general.
- 139. — Weapons and dangerous instruments.
- 140. — Harm, injury, and death.
- 141. — Other offenses or charges.
- 142. — Status of victim.
- 143. Fact determining grade or degree of offense.
- 144. Multiple enhancements based on one factor.
- 145. Use of same factor to enhance different sentences.
- 146. Offenses committed in same transaction or course of conduct.

**II. SENTENCING PROCEEDINGS
IN GENERAL.**

Instructions to jury, see also CRIMINAL LAW.

(A) IN GENERAL.

- 200. In general.
- 201. Duties of court or judge in general.

350H. SENTENCING AND PUNISHMENT

II. SENTENCING PROCEEDINGS
IN GENERAL.(Cont'd)

- 202. Discretion of court.
- 203. Constitutional, statutory and other regulatory provisions.
- 204. — In general.
- 205. — Purpose.
- 206. — Validity.
- 207. — Amendment.
- 208. — Repeal.
- 209. — Construction.
- 210. — Time of taking effect.
- 211. — Retroactive operation.

(B) JURISDICTION.

- 225. In general.
- 226. Retention of jurisdiction.
- 227. Relinquishment of jurisdiction.
- 228. Loss or termination of jurisdiction.
Effect of inordinate delay, see ¶384.
- 229. Objections and disposition thereof.

(C) PRELIMINARY PROCEEDINGS IN GENERAL.

- 235. In general.
- 235.5. Indictments and charging instruments.
- 236. Notice of evidence, witnesses, and sentencing factors.
- 237. — In general.
- 238. — Necessity.
- 239. — Time.
- 240. — Requisites and sufficiency.
- 241. Notice of potential sentence.
- 242. Other discovery and disclosure.
Disclosure of presentence report, see ¶292. Results of psychological or psychiatric examination, see ¶263.
- 243. — In general.
- 244. — Necessity.
- 245. — Time.
- 246. — Requisites and sufficiency.
- 247. Failure to give notice or make disclosure.
- 248. Physical or other examination of defendant.
Psychological or psychiatric examination, see ¶258.
- 249. Objections and disposition thereof.

(D) MENTAL ILLNESS OR DISORDER
OF DEFENDANT.

Capital cases, see ¶1791–1794.

- 250. In general.

II. SENTENCING PROCEEDINGS
IN GENERAL.(Cont'd)

- 251. Discretion of court.
- 252. Competency.
Competency to stand trial, see MENTAL HEALTH ¶432.
- 253. — In general.
- 254. — Persons with intellectual disabilities.
- 255. Counsel.
- 256. Information, conduct, or circumstance raising question of competency.
- 257. Motion, petition, or plea.
- 258. Psychological or psychiatric examination.
Examination before conviction, see MENTAL HEALTH ¶434. Right to payment for examination, see COSTS.
- 259. — In general.
- 260. — Necessity of examination.
- 261. — Conduct of examination.
- 262. — Use and effect.
- 263. Disclosure.
- 264. Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.
 - (5). Degree of proof.
 - (6). Sufficiency.
- 265. Questions of law or fact.
- 266. Hearing.
- 267. — In general.
- 268. — Necessity.
- 269. — Conduct of hearing.
- 270. — Findings and conclusions.
- 271. Decision or order.
- 272. Objections and disposition thereof.

(E) PRESENTENCE REPORT.

- 275. In general.
- 276. Necessity.
- 277. Request or motion.
- 278. Waiver of report.
- 279. Preparation of report.
- 280. Counsel.
- 281. Form and contents.
- 282. — In general.
- 283. — Reliability, credibility, and accuracy.
- 284. — Hearsay.

350H. SENTENCING AND PUNISHMENT**II. SENTENCING PROCEEDINGS
IN GENERAL.**(Cont'd)

- 285. — Anonymous or confidential informants.
- 286. — Information from victim or victim's representative.
- 287. — Legality of information.
- 288. — Other offenses, charges, or misconduct.
- 289. — Other particular issues.
- 290. Successive, supplemental and updated report.
- 291. Resentencing.
- 292. Disclosure of report.
- 293. — In general.
- 294. — Disclosure to defendant.
- 295. — Disclosure to defense counsel.
- 296. — Disclosure to third parties.
- 297. — Sufficiency of disclosure.
- 298. — Editing and redaction.
- 299. Objections and disposition thereof.
- 300. Use and effect of report.
- 301. Effect of inaccuracy or uncorrected defect.

(F) EVIDENCE.

- 302. In general.
- 303. Applicability of rules of evidence in general.
- 304. Discretion of court.
- 305. Presumptions.
- 306. Burden of proof.
- 307. Admissibility in general.
- 308. — In general.
- 309. — Nature and circumstances of offense.
- 310. — Harm or injury attributable to offense.
- 311. Evidence from prior proceedings.
- 312. Defendant's character.
- 313. Other offenses, charges, misconduct.
- 314. Records and papers from guilt phase.
- 315. Demonstrative evidence.
- 316. Declarations and confessions.
- 317. Hearsay.
- 318. Documentary evidence.
- 319. Opinion evidence.
- 320. Expert evidence.
- 321. Wrongfully obtained evidence.
- 322. Degree of proof.

**II. SENTENCING PROCEEDINGS
IN GENERAL.**(Cont'd)

- 322.3. — In general.
- 322.5. — Factors enhancing sentence.
- 323. Sufficiency.

(G) HEARING.

- 325. In general.
- 326. Discretion of court.
- 327. Necessity that trial judge preside.
- 328. Scope of inquiry.
- 329. Questions of law or fact.
- 330. Necessity of hearing.
- 331. — In general.
- 332. — Request for hearing.
- 333. — Waiver.
- 334. Bifurcated proceeding in general.
- 335. Use of jury.
Constitutional right to have jury determine punishment, see JURY §24.
- 336. Necessity for new jury.
- 337. Time for hearing.
- 338. — In general.
- 339. — Continuance.
- 340. Presence of defendant.
- 341. — In general.
- 342. — Time, stage, or character of proceedings.
- 343. — Nature or degree of offense.
- 344. — Actual or potential punishment.
Includes capital cases.
- 345. — Voluntary absence and waiver.
- 346. — Other particular issues.
- 347. Counsel.
- 348. — In general.
- 349. — Waiver or appearance pro se.
- 350. Advice and warnings.
- 351. — In general.
- 352. — Matters related to appeal.
- 353. — Advice as to post-conviction or other collateral relief.
- 354. — Other particular issues.
- 355. Allocution.
- 356. — In general.
- 357. — Nature or degree of offense.
- 358. — Actual or potential punishment.
Includes capital cases.
- 359. — Requisites and sufficiency.
- 360. — Waiver.

350H. SENTENCING AND PUNISHMENT**II. SENTENCING PROCEEDINGS
IN GENERAL.**(Cont'd)

- 361. Statement by victim or victim's representative.
- 362. Remarks and conduct of court.
- 363. Reception of evidence.
- 364. — In general.
- 365. — Order of proof.
- 366. — Rebuttal.
- 367. — Reopening.
- 368. — Objections and disposition thereof.
- 368.5. Instructions.
- 369. Findings and statement of reasons.
- 370. — In general.
- 371. — Purpose.
- 372. — Necessity.
- 373. — Sufficiency.
- 374. — Objections and disposition thereof.
- 375. Verdict.
- 376. Time for imposing sentence.
- 377. — In general.
- 378. — Necessary or mandatory delay.
- 379. — Deferral of sentence.
- 380. — Applicability and operation of speedy trial guarantee.
- 381. — Extension of time.
- 382. — Length of delay.
- 383. — Consent and waiver.
- 384. — Effect of delay and remedy.
Includes loss of jurisdiction.
- 385. Objections and disposition thereof.

**(H) PROCEEDINGS AFTER GUILTY OR
NOLO CONTENDERE PLEA.**

Includes procedural matters peculiar to sentencing following plea of guilty or nolo contendere. Terms of plea bargain or other agreement as factor in determining punishment, see §60 above. Voluntariness of plea and validity of plea agreement, see CRIMINAL LAW §273, 275. Sufficiency of plea allocution, see CRIMINAL LAW §273.1(4), 275.

- 400. In general.
- 401. Authority of court.
- 402. Necessity that judge who accepted plea impose sentence.
- 403. Scope of inquiry after guilty or nolo contendere plea.
- 404. — In general.
- 405. — New matters.
- 406. — Doubt as to guilt.
- 407. — Matters related to plea.

**II. SENTENCING PROCEEDINGS
IN GENERAL.**(Cont'd)

- 408. — Nature, degree, and circumstances of offense.
- 409. — Other particular matters.
- 410. Information or evidence.
- 411. — In general.
- 412. — Presumptions.
- 413. — Burden of proof.
- 414. — Admissibility.
- 415. — Degree of proof.
- 416. — Sufficiency.
- 417. Questions of law or fact.
- 418. Hearing.
- 419. — In general.
- 420. — Necessity for hearing.
- 421. — Conduct of hearing.
- 422. — Advice and warnings.
- 423. Findings and statement of reasons.
- 424. Decision or order.

(I) EXECUTION OF SENTENCE.

Execution of death sentence, see VIII(H).

- 460. In general.
- 461. Commitment or mittimus.
- 462. — In general.
- 463. — What is a commitment or mittimus.
- 464. — Time for issuance.
- 465. — Form and requisites.
- 466. — Amendment and correction.
- 467. — Objections.

(J) STAY OF EXECUTION OF SENTENCE.

Stay of execution of death sentence, see VIII(H).

- 475. In general.
- 476. Authority to grant.
- 477. Application or motion.
- 478. Grounds and purposes.
- 479. Time of stay.
- 480. Effect.

**III. SENTENCE ON CONVICTION
OF DIFFERENT CHARGES.**

Criminal liability for several offenses in same transaction, see CRIMINAL LAW §29. Merger of offenses, see CRIMINAL LAW §30. Double jeopardy, see DOUBLE JEOPARDY.

350H. SENTENCING AND PUNISHMENT**(A) IN GENERAL.**

Consecutive or concurrent service of sentences, see III(B).

- 500. In general.
- 501. Merger.
- 502. Constitutional, statutory, and regulatory provisions.
- 503. — In general.
- 504. — Purpose.
- 505. — Validity.
- 506. — Retroactive operation.
- 507. Same offense in general.
- 508. Single transaction or course of conduct.
- 509. — In general.
- 510. — Legislative intent as to punishment.
- 511. — Proof of fact not required for other offense.
- 512. — Sufficiency of evidence of one offense to sustain conviction for the other.
- 513. — Identity of intent or objective.
- 514. Lesser and included offenses in general.
- 515. Particular offenses.
§§516–539 include, in descending order, both multiple charges of the described offense and charges of the described offense and another offense; e.g., sentence on multiple convictions of robbery, and sentence on conviction of robbery and assault, both go to §537.
- 516. — In general.
- 517. — Arson and malicious mischief.
- 518. — Assault and battery.
Vehicular assault, see §534.
- 519. — Burglary and trespass.
- 520. — Conspiracy and racketeering.
 - (1). In general.
 - (2). Single or multiple conspiracies.
 - (3). Conspiracy and substantive or predicate offense.
- 521. — Counterfeiting and forgery.
- 522. — Criminal sexual conduct, incest, and prostitution.
- 523. — Disorderly conduct and breach of the peace.
- 524. — Drugs and narcotics.
- 525. — Escape.
- 526. — Extortion, threats, stalking, and harassment.
- 527. — False pretenses and fraud.
- 528. — Gambling offenses.
- 529. — Homicide, mayhem, and assault with intent to kill.

Vehicular homicide, see §534.

- 530. — Infants, offenses specific to.
Sex offenses, see §522.
- 531. — Kidnapping and false imprisonment.
- 532. — Larceny, embezzlement, and receiving stolen property.
- 533. — Liquor offenses.
- 534. — Motor vehicle offenses.
- 535. — Obscenity and lewdness.
- 536. — Obstructing justice, bribery, and perjury.
- 537. — Robbery.
- 538. — Tax offenses.
- 539. — Weapons and explosives.
- 540. Multiple victims.

(B) CONSECUTIVE OR CUMULATIVE SENTENCES.**1. IN GENERAL.**

- 545. In general.
- 546. Authority to impose.
- 547. Right to have sentences run concurrently.
- 548. Discretion of court.

2. PARTICULAR OFFENSES.

- 555. In general.
§§555–578 include, in descending order, both multiple charges of the described offense and charges of the described offense and another offense; e.g., sentence on multiple convictions of robbery, and sentence on conviction of robbery and assault, both go to §576.
- 556. Arson and malicious mischief.
- 557. Assault and battery.
Vehicular assault, see §573.
- 558. Burglary and trespass.
- 559. Conspiracy and racketeering.
 - (1). In general.
 - (2). Single or multiple conspiracies.
 - (3). Conspiracy and substantive or predicate offense.
- 560. Counterfeiting and forgery.
- 561. Criminal sexual conduct, incest, and prostitution.
- 562. Disorderly conduct and breach of the peace.
- 563. Drugs and narcotics.
- 564. Escape.
- 565. Extortion, threats, stalking, and harassment.
- 566. False pretenses and fraud.
- 567. Gambling offenses.

350H. SENTENCING AND PUNISHMENT**III. SENTENCE ON CONVICTION OF
DIFFERENT CHARGES.(Cont'd)**

- 568. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see ¶573.
- 569. Infants, offenses specific to.
Sex offenses, see ¶561.
- 570. Kidnapping and false imprisonment.
- 571. Larceny, embezzlement, and receiving stolen property.
- 572. Liquor offenses.
- 573. Motor vehicle offenses.
- 574. Obscenity and lewdness.
- 575. Obstructing justice, bribery, and perjury.
- 576. Robbery.
- 577. Tax offenses.
- 578. Weapons and explosives.

3. FACTORS AND PURPOSES.

- 585. In general.
- 586. Deterrence.
- 587. Protection of society.
- 588. Rehabilitation and reform.
- 589. Aggravating circumstances in general.
- 590. Mitigating circumstances in general.
- 591. Distinct offenses.
- 592. Grade or degree of offense.
- 593. — In general.
- 594. — Misdemeanors.
- 595. Offense committed while in custody.
- 596. Offense committed while on bail, probation, or parole.
- 597. Violent or nonviolent character of offense.
- 598. Weapons and dangerous instruments.
- 599. Brutality, cruelty, heinousness.
- 600. Nature and degree of harm or injury.
- 601. Offender's criminal history or other misconduct.
- 602. Dangerousness.
- 603. Offenses committed in one transaction, episode, or course of conduct.
- 604. — In general.
- 605. — Separate acts.
- 606. — Distinct offenses.
- 607. — Proof of fact not required for other offense.
- 608. — "Same evidence" test; sufficiency of evidence of one offense to sustain conviction for the other.

**III. SENTENCE ON CONVICTION OF
DIFFERENT CHARGES.(Cont'd)**

- 609. — Intent, objective, and motive.
- 610. Offense committed to facilitate other offense.
- 611. Multiple victims.
- 612. Plea bargain or other agreement.

4. DUAL USE.

- 620. In general.
- 621. Same factor supporting consecutive sentence and other enhancement.

**(C) ACCOMMODATION TO PRIOR OR
SUBSEQUENT SENTENCE.**

- 630. In general.
- 631. Sentence consecutive to other sentence.
- 632. Sentence in other jurisdiction.
- 633. — In general.
- 634. — Sentence in other state.
- 635. — State and federal sentences.
- 636. Sentence not yet imposed.
- 637. Offense committed by prisoner or while under legal restraint.

(D) DISPOSITION.

- 642. In general.
- 643. Length of total or aggregate sentence in general.
- 644. Total sentence deemed excessive.
- 645. Total sentence deemed not excessive.
- 646. Life imprisonment.
- 647. — In general.
- 648. — Term consecutive to life sentence.

IV. SENTENCING GUIDELINES.

Probation and supervised release, see IX. Habitual offenders and career criminals, see VI.

(A) IN GENERAL.

- 650. In general.
- 651. Operation and effect of guidelines in general.
- 652. Applicability of guidelines in general.
- 653. What guideline applies; choice of guideline.
Retroactive application, see ¶664. Time of taking effect, see ¶663.
 - (1). In general.
 - (2). Offenses against the person.
 - (3). Property offenses.

350H. SENTENCING AND PUNISHMENT**IV. SENTENCING GUIDELINES.(Cont'd)**

- (4). Public officials.
- (5). Drugs.
- (6). Criminal enterprises and racketeering.
- (7). Fraud and deceit.
- (8). Prostitution, sexual exploitation, and obscenity.
- (9). Administration of justice.
- (10). Explosives, arson, and firearms.
- (11). Money laundering.
- (12). Taxation.
- (13). Other substantive offenses.
- (14). Conspiracies, attempts, and solicitations.
- (15). Accessories and misprision.
- 654. Effect on judicial discretion.
- 655. Constitutional, statutory, and regulatory provisions.
- 656. — In general.
- 657. — Purpose.
- 658. — Validity.
- 659. — Adoption or enactment.
- 660. — Amendment.
- Retroactive operation, see ¶664.*
- 661. — Construction in general.
- 661.5. — Mandatory or advisory.
- 662. — Conflict with statute.
- 663. — Time of taking effect.
- 664. — Retroactive operation.
 - (1). In general.
 - (2). Offense committed before effective date of guideline.
 - (3). Amendment or revision of guideline.
 - (4). — In general.
 - (5). — Nature of amendment or revision.
 - (6). Continuing offenses.
- 665. Commentary and policy statements.

(B) OFFENSE LEVELS.**1. IN GENERAL.**

- 666. In general.
- 667. Relevant conduct.
- 668. — In general.
- 669. — Acts and omissions committed, aided, or caused.
- 670. Controlled substances in general.

IV. SENTENCING GUIDELINES.(Cont'd)

- 671. Activity in concert with others.
- 672. — In general.
- 673. — Scope of activity undertaken.
- 674. — Conduct in furtherance of jointly undertaken activity.
- 675. — Reasonably foreseeable acts and omissions.
- 676. Course of conduct.
- 677. Common scheme or plan.
- 678. Harm resulting or intended.

2. FACTORS PECULIAR TO PARTICULAR OFFENSES.

- 679. In general.
- 680. Arson and malicious mischief.
- 681. Assault and battery.
- 682. Burglary and trespass.
- 683. Conspiracy and racketeering.
- 684. Counterfeiting and forgery.
- 685. Disorderly conduct and breach of the peace.
- 686. Drugs and narcotics.
- 687. Escape.
- 688. Extortion and threats.
- 689. False pretenses and fraud.
- 690. Gambling offenses.
- 691. Homicide, mayhem, and assault with intent to kill.
- 692. Infants, offenses specific to.
Sex offenses, see ¶703.
- 693. Kidnapping and false imprisonment.
- 694. Larceny and embezzlement.
- 695. Liquor offenses.
- 696. Money laundering.
- 697. Motor vehicle offenses.
- 698. Obscenity and lewdness.
- 699. Obstructing justice and bribery.
- 700. Perjury.
- 701. Receiving stolen goods.
- 702. Robbery.
- 703. Sex offenses, incest, and prostitution.
- 704. Tax offenses.
- 705. Weapons and explosives.
- 706. Other particular offenses.

3. FACTORS APPLICABLE TO SEVERAL OFFENSES.

- 720. In general.
- 721. Pecuniary or profit motive.
- 722. Offense resulting in death.

350H. SENTENCING AND PUNISHMENT**IV. SENTENCING GUIDELINES.(Cont'd)**

- 723. Bodily injury and degree thereof.
- 724. Risk of death or bodily injury.
- 725. Planning.
- 726. Dangerous weapons or destructive devices.
 - (1). In general.
 - (2). What constitutes a weapon.
 - (3). Possession and carrying.
 - (4). Use.
 - (5). Accomplices and co-participants.
- 727. Sophistication in commission or concealment.
- 728. Use or threat of force.
- 729. Damage to property.
- 730. Abducting or restraining person.
- 731. Facilitation of other offense.
- 732. Age of victim.
- 733. Official or governmental victim.
- 734. Repetitive or ongoing conduct.
- 735. Business and organized scheme.
- 736. Value of loss or benefit.
- 737. Disrupting or jeopardizing institution.
- 738. Bargain, agreement, consent, or waiver.

(C) ADJUSTMENTS.**1. IN GENERAL.**

- 750. In general.

2. FACTORS INCREASING OFFENSE LEVEL.

- 751. In general.
- 752. Organizers, leaders, managerial role.
- 753. Hate crimes; prejudice as motive.
- 754. Vulnerability of victim.
- 755. Official victim.
- 756. Restraint of victim.
- 757. Terrorism.
- 758. Abuse of position of trust.
- 759. Use of special skill.
- 760. Involving minor in commission of crime.
- 761. Obstruction of justice.
- 762. Endangerment.

3. FACTORS DECREASING OFFENSE LEVEL.

- 763. In general.
- 764. Minor or minimal participation.
- 765. Acceptance of responsibility.

(D) MULTIPLE OFFENSES OR COUNTS.

- 770. In general.
- 771. Grouping in general.
- 772. Same or inseparable harm or injury in general.
- 773. Single act or transaction.
- 774. Acts or conduct connected by common objective or plan.
- 775. Continuing offenses.
- 776. More than one victim.
- 777. Other particular problems.

(E) PRIOR OR SUBSEQUENT MISCONDUCT.

Includes prior or subsequent misconduct as affecting criminal history category or offense level. Prior or subsequent misconduct as ground for departure, see §831 et seq. Inadequacy of criminal history category as ground for departure, see §841. Habitual offenders and career criminals, see VI.

- 779. In general.
- 780. Grade, degree or classification of other offense.
- 781. Crime of violence.
- 782. Arrests, charges, and unadjudicated misconduct.
- 783. Offense committed while in custody or under restraint.
- 784. Nature of conviction or adjudication.
- 785. — In general.
- 786. — Intervention, diversion, and withheld adjudication.
- 787. — Juvenile or youthful offender adjudication.
- 788. Disposition.
- 789. — In general.
- 790. — Probation and suspension of sentence.
- 791. — Sentence of imprisonment.
- 792. — Length of sentence.
- 793. Offense or adjudication in other jurisdiction.
- 794. Time.
- 795. Order.
- 796. Number.
- 797. Related cases.
- 798. Defects in other adjudication.
- 799. Effect of subsequent circumstances.

(F) DEPARTURES.**1. IN GENERAL.**

- 800. In general.

350H. SENTENCING AND PUNISHMENT**IV. SENTENCING GUIDELINES.(Cont'd)**

- 801. Discretion of court.
- 802. What constitutes departure.
- 803. Grounds for departure.
- 804. — In general.
- 805. — Disagreement with guidelines.
- 806. — Atypical or unusual case in general.
- 807. — Factor not adequately taken into account.
- 808. — Factor present to unusual degree.
- 809. — Bargain, agreement, consent, or waiver.

2. UPWARD DEPARTURES.

- 814. In general.
- 815. Discretion of court.
- 816. Insufficiency of guidelines sentence.
- 817. Protection of community in general.
- 818. Offense-related factors.
- 819. — In general.
- 820. — Scope, seriousness, and gravity of offense.
- 821. — Use of weapon or destructive device.
- 822. — Involvement of gang.
- 823. — Abuse of office or trust.
- 824. — Risk or endangerment to others.
- 825. — Excessive force, brutality, extreme conduct.
- 826. Offender-related factors.
- 827. — In general.
- 828. — Lack of remorse and failure to cooperate.
- 829. — Exercise of rights.
- 830. — Future dangerousness; need for treatment.
- 831. Other offenses, misconduct or charges.
- 832. — In general.
- 833. — Connected or inseparable offenses.
- 834. — Arrests or charges; necessity of conviction.
- 835. — Substance abuse and intoxication.
- 836. — Misconduct while on probation, bail or similar status.
- 837. — Escalating criminal behavior.
- 838. — Juvenile record or disposition.
- 839. — Timing of offense.
- 840. — Perjury or other untruthfulness.

IV. SENTENCING GUIDELINES.(Cont'd)

- 841. Inadequacy of criminal history category.
- 842. Victim-related factors.
- 843. — In general.
- 844. — Extreme injury, trauma, or loss.
- 845. — Kidnapping; restraint.
- 846. — Vulnerability of victim.
- 847. Other particular grounds.
- 848. Bargain, agreement, consent, or waiver.

3. DOWNWARD DEPARTURES.

- 850. In general.
- 851. Discretion of court.
- 852. Excessiveness of guidelines sentence.
- 853. Offense-related factors.
- 854. — In general.
- 855. — Scope, seriousness or degree of offense.
- 856. — Defendant's role in offense.
- 857. — Provocation, participation or condonation by victim.
- 858. — Duress and compulsion.
- 859. Offender-related factors.
- 860. — In general.
- 861. — Remorse, cooperation, assistance.
- 862. — Psychiatric disabilities.
- 863. — Physical illness or infirmity.
- 864. — Drug or alcohol addiction or dependence.
- 865. — Age.
- 866. — Family, community or business ties and obligations.
- 867. — Disadvantaged childhood or youth.
- 868. — Absence of prior record.
- 869. — Rehabilitation.
- 870. Other particular grounds.
- 871. Bargain, agreement, consent, or waiver.

(G) DUAL OR DUPLICATIVE USE.

See also DOUBLE JEOPARDY.

- 900. In general.
- 901. Factor inherent in or element of offense in general.
- 902. Factor taken into account by guidelines in general.
- 903. Particular cases and problems.
Includes, in descending order, all determinations regarding alleged duplicative use of factors, e.g., an allegation encompassing a base offense level and a departure would be classified at the line for departures.
- 904. — In general.

350H. SENTENCING AND PUNISHMENT**IV. SENTENCING GUIDELINES.(Cont'd)**

- 905. — Base offense level.
- 906. — Adjustments.
- 907. — Multiple offenses or counts.
- 908. — Criminal history.
- 909. — Departures.

(H) PROCEEDINGS.**1. IN GENERAL.**

- 930. In general.
- 931. Counsel.
- 931.5. Indictments and charging instruments.
- 932. Advice and notice.
- 933. — In general.
- 934. — Necessity.
- 935. — Requisites and sufficiency.
- 936. Other discovery and disclosure.
- 937. Pleadings and motions.
- 938. — In general.
- 939. — Motion for departure in general.
- 940. — Discretion of prosecutor or government.
- 941. — Necessity of motion by government.
- 942. — Time for motion.
- 943. — Requisites of motion.
- 944. — Effect of motion.
- 945. — Motion by defendant.
- 946. Refusal to seek downward departure.
- 947. Effect of cooperation agreement or other promise or representation.
- 948. Request for or election of guidelines sentence.

2. EVIDENCE.

- 960. In general.
- 961. Discretion of court.
- 962. Presumptions.
- 963. Burden of proof.
- 964. Admissibility in general.
- 965. Evidence from prior proceedings.
- 966. Demonstrative evidence.
- 967. Hearsay.
- 968. Declarations and confessions.
- 969. Documentary evidence.
- 970. Opinion evidence.
- 971. Expert evidence.
- 972. Wrongfully obtained evidence.
- 973. Degree of proof.

IV. SENTENCING GUIDELINES.(Cont'd)

- 973.3. — In general.
- 973.5. — Factors enhancing sentence.
- 974. Sufficiency.
- 975. — In general.
- 976. — Defendant's role in offense.
- 977. — Obstruction of justice.
- 978. — Amount and degree of loss or injury.
- 979. — Quantity of drugs and drug-related matter.
- 980. — Matters related to firearms and destructive devices.
- 981. — Remorse, cooperation and acceptance of responsibility.
- 982. — Other offenses, misconduct, or charges.

3. HEARING.

- 985. In general.
- 986. Discretion of court.
- 987. Scope of inquiry.
- 988. Questions of law or fact.
- 989. Necessity for hearing.
- 990. Time for hearing.
- 991. Conduct of hearing.
- 991.5. Instructions.
- 992. Findings and statement of reasons.
- 993. — In general.
- 994. — Purpose.
- 995. — Necessity.
- 996. — Sufficiency.
- 997. — Objections and disposition thereof.
- 998. Decision or order.

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED.

Includes matters concerning the formal or technical sufficiency of sentences. Includes interpretation, construction, and effect of sentences. Restitution, see §2196.

(A) IN GENERAL.

- 1000. In general.
- 1001. What is a sentence.
- 1002. Constitutional, statutory, and regulatory provisions.
- 1003. — In general.
- 1004. — Purpose.
- 1005. — Validity.
- 1006. — Retroactive operation.

350H. SENTENCING AND PUNISHMENT**(B) SUFFICIENCY.****1. IN GENERAL.**

Habitual offenders, see Ⓒ1397. *Death penalty, see* Ⓒ1787.

- 1010. In general.
- 1011. Contents of sentence in general.
- 1012. Necessity of writing.
- 1013. Certainty and definiteness.
- 1014. — In general.
- 1015. — Effect of uncertainty.
- 1016. Designation of defendant.
- 1017. Designation of offense.
- 1018. — In general.
- 1019. — Grade or degree.
- 1020. Multiple counts or charges.
- 1021. — In general.
- 1022. — Specification of count or charge.
- 1023. Reference to or recital of statute.
- 1024. Recitations relating to procedure.
- 1025. Signature.
- 1026. Date.

2. PUNISHMENT.

- 1050. In general.
- 1051. Imprisonment.
- 1052. — In general.
- 1053. — Duration.
Credits against sentence, see Ⓒ1073.
- 1054. — Commencement and termination.
- 1055. Life imprisonment.
- 1056. Indeterminate term.
- 1057. — In general.
- 1058. — Minimum term.
- 1059. — Maximum term.
- 1060. Multiple counts or charges.
- 1061. Accommodation to sentence imposed
in other proceeding.
- 1062. Concurrent or consecutive terms.
- 1063. — In general.
- 1064. — Consecutive terms.
- 1065. — Commencement of second or suc-
cessive term.
- 1066. Place where sentence is to be served.
- 1067. Incidents of sentence.
- 1068. Fines.
- 1069. — In general.
- 1070. — Fine and other punishment.
- 1071. Alternative dispositions.
- 1072. Restitution.
- 1073. Credits.

Effect of provisions relating to credits, see V(D). *En-
titlement to credits or offsets against sentences, see* V(D).

(C) CONSTRUCTION.**1. IN GENERAL.**

- 1100. In general.
- 1101. Intent of court.
- 1102. Meaning of language.
- 1103. Existence of ambiguity.
- 1104. Sentence as a whole.
- 1105. Extrinsic aids to construction.
- 1106. — In general.
- 1107. — Statements of court not part of
sentence.
- 1108. — Other proceedings in case.
- 1109. — Statutes.

2. PUNISHMENT.

- 1115. In general.
- 1116. Imprisonment.
- 1117. — In general.
- 1118. — Duration.
Effect of credits against sentence, see V(D).
- 1119. — Commencement and termination.
- 1120. Life imprisonment.
- 1121. Multiple counts or charges.
- 1122. — In general.
- 1123. — General sentences.
- 1124. Indeterminate term.
- 1125. — In general.
- 1126. — Minimum term.
- 1127. — Maximum term.
- 1128. Concurrent or consecutive terms.
- 1129. — In general.
- 1130. — Commencement of second or suc-
cessive term.
- 1131. — Duration.
- 1132. Accommodation to sentence imposed
in other proceeding.
- 1133. Place where sentence is to be served.
- 1134. Incidents of sentence.
- 1135. Fines.
- 1136. Restitution.
- 1137. Conflict in record.
- 1138. — In general.
- 1139. — Oral and written pronounce-
ments.
- 1140. — Conflict with charging document.

350H. SENTENCING AND PUNISHMENT**(D) CREDITS.**

Excludes credits against sentence imposed on revocation of probation, see ¶2041. Excludes credits against sentence imposed upon revocation of parole, see PARDON AND PAROLE. Excludes good conduct credits, see PRISONS.

- 1155. In general.
- 1156. Prior confinement.
- 1157. — In general.
- 1158. — Pretrial confinement.
- 1159. — Preconviction confinement.
- 1160. — Presentence confinement.
- 1161. — Confinement pending appeal or other review.
- 1162. — Confinement on invalid or erroneous sentence.
- 1163. — Confinement on conviction subsequently set aside or reversed.
- 1164. Release.
- 1165. — In general.
- 1166. — Bail or other bond or recognizance.
- 1167. — Probation or suspended sentence.
Credits upon revocation of probation, see ¶2041.
- 1168. — Parole.
Credits upon revocation of parole, see PARDON AND PAROLE ¶75, 76.
- 1169. — Erroneous release.
- 1170. Home detention and similar status.
- 1171. Medical and psychological treatment or rehabilitation.
- 1172. Proceedings in different jurisdictions.
- 1173. — In general.
- 1174. — Different states.
- 1175. — State and federal sentences.
- 1176. Effect of escape or fugitive status.
- 1177. — In general.
- 1178. — Who is an escapee or fugitive.
- 1179. — Time served before escape.
- 1180. — Crime committed after escape.
- 1181. — Sentence for escape.
- 1182. — Proceedings in different jurisdictions.

VI. HABITUAL AND CAREER OFFENDERS.

Includes situations in which an accused is charged with being an habitual criminal or repeat offender, and a separate trial or hearing is had on the repeat offender issue or a specific finding on this issue is made in a unitary trial. Excludes prior offenses as among the circumstances considered in fixing the penalty, see I (In general), III (Sentence on multiple charges), IV (Guidelines), VIII (Death penalty), IX (Probation). See also DOUBLE JEOPARDY. Habitual or repeat traffic offenders, see AUTOMOBILES.

(A) IN GENERAL.

- 1200. In general.
- 1201. Power to punish.
- 1202. Repeat offenders defined.
- 1203. Purpose of repeat offender sentencing.
Purpose of statute, see ¶1209.
- 1204. Operation of repeat offender provisions.
- 1205. — In general.
- 1206. — Sentence enhancement distinguished from separate offense.
- 1207. Recidivist treatment as mandatory or discretionary.
- 1208. Constitutional, statutory, and regulatory provisions in general.
- 1209. Purpose of statute or regulatory provision.
- 1210. Validity of statute or regulatory provision.
Validity of retroactive operation, see ¶1215.
- 1211. Amendment.
Retroactive operation of amendment, see ¶1219.
- 1212. Repeal of statute or regulatory provision.
- 1213. Construction.
- 1214. Time of taking effect.
- 1215. Retroactive operation.
- 1216. — In general.
- 1217. — Application to offense committed before effective date.
- 1218. — Use for enhancement of offense or conviction occurring before effective date.
- 1219. — Amendment or revision of statute or regulation.

(B) OFFENSES SUBJECT TO ENHANCEMENT.

- 1230. In general.
- 1231. Grade or degree of offense.
- 1232. — In general.
- 1233. — Misdemeanors or petty offenses.
- 1234. — Felonies in general.
- 1235. Controlled substance offenses.
- 1236. Sex offenses.
- 1237. Weapons offenses.
- 1238. Other particular offenses.
- 1239. Actual or potential penalty.
- 1240. — In general.
- 1241. — Life imprisonment.
- 1242. — Capital offenses.

350H. SENTENCING AND PUNISHMENT**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

1243. Violent or nonviolent character of offense.
 1244. — In general.
 1245. — Particular offenses.

(C) OFFENSES USABLE FOR ENHANCEMENT.**1. IN GENERAL.**

1250. In general.
 1251. Actual or potential penalty.
 1252. Grade or degree of offense.
 1253. — In general.
 1254. — Felony or misdemeanor in general.
 1255. Particular offenses.
 1256. — In general.
 1257. — Controlled substance offenses.
 1258. — Sex offenses.
 1259. — Weapons offenses.
 1260. — Other particular offenses.
 1261. Violent or nonviolent character of offense.
 1262. — In general.
 1263. — Particular offenses.

2. OFFENSES IN OTHER JURISDICTIONS.

1270. In general.
 1271. Criminal nature of conduct in general.
 1272. Actual or potential penalty.
 1273. Miscellaneous particular offenses.
 1274. Grade or degree of offense.
 1275. — In general.
 1276. — Felony or misdemeanor in general.
 1277. — Felony in other jurisdiction.
 1278. — Felony in forum.
 1279. — Equivalence or substantial similarity to felony in forum.
 1280. — Offense not felony in other jurisdiction.
 1281. — Offense not felony in forum.
 1282. Conviction in foreign country.
 1283. Violent or nonviolent character of offense.
 1284. — In general.
 1285. — Particular offenses.

**(D) CONVICTIONS AND DISPOSITIONS
USABLE FOR ENHANCEMENT.**

Effect of subsequent circumstances, see VI(I).

1286. In general.
 1287. Intervention, diversion, and deferred adjudications.
 1288. Commitment for treatment.
 1289. Guilty and nolo contendere pleas.
 1290. Military convictions and court-martials.
 1291. Juvenile or youthful offender adjudications.
 1292. Convictions or adjudications in other jurisdictions.

(E) TIME OF PRIOR OFFENSE OR CONVICTION.

1295. In general.
 1296. Remoteness.
 1297. Particular intervals.
 1298. Computation.

(F) ORDER OF OFFENSES AND CONVICTIONS.

1299. In general.
 1300. Order of convictions.
 1301. Order of offenses.
 1302. Necessity that predicate conviction precede offense.
 1303. Matters related to sentencing.
 1304. Other issues involving sequence.

(G) NUMBER OF PRIOR ADJUDICATIONS.

1305. In general.
 1306. Number required.
 1307. Convictions counted as separate.
 1308. Scheme, plan or course of conduct.
 1309. Contemporaneous convictions or sentences.

(H) DEFECTS IN PRIOR ADJUDICATION.

Effect of subsequent circumstances, see VI(I).

1310. In general.
 1311. Challenge to prior adjudication in general.
 1312. Constitutional objections in general.
 1313. Grand jury and filing of accusatory instrument.
 1314. Matters related to plea.
 1315. Impaneling jury and jury waiver.
 1316. Counsel in prior proceeding.
 1317. — In general.
 1318. — Absence or denial of counsel.

350H. SENTENCING AND PUNISHMENT**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- 1319. — Conflict of interest.
- 1320. — Adequacy of representation.
- 1321. — Waiver of counsel and self-representation.
- 1322. Use of unlawfully obtained evidence.
- 1323. Conduct of trial.
- 1324. Order and judgment.
- 1325. Sentence and punishment.
- 1326. Other particular objections.
- 1327. Waiver and estoppel.
- 1328. Juvenile and youthful offender adjudications.

**(I) SUBSEQUENT CIRCUMSTANCES AFFECTING
PRIOR ADJUDICATION.**

- 1330. In general.
- 1331. Pending proceedings.
- 1332. — In general.
- 1333. — Appeal.
- 1334. — Post-conviction proceeding.
- 1335. — Habeas proceeding.
- 1336. Effect of change in law.
- 1337. Reclassification of offense.
- 1338. Matters related to sentence.
- 1339. Reversal or vacation.
- 1340. Parole.
- 1341. Expungement.
- 1342. Pardon or commutation of sentence.
- 1343. Restoration of civil rights.
- 1344. Other particular subsequent circumstances.

(J) DUAL USE.

- 1345. In general.
- 1346. Prior adjudication as element of current offense.
- 1347. — In general.
- 1348. — Escape.
- 1349. — Weapons offenses.
- 1350. — Other particular offenses.
- 1351. Prior adjudication determining grade or degree of current offense.
- 1352. Use of same prior adjudication to enhance different sentences.

(K) PROCEEDINGS.

- 1355. In general.
- 1356. Unitary or bifurcated trial.

**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- 1357. — In general.
- 1358. — Necessity and propriety of bifurcation.
- 1359. — Same judge.
- 1360. — Same jury.
- 1361. Notice of intent to seek enhancement.
- 1362. Premature disclosure of prior offense.
- 1363. Recidivist or habitual offender charge.
- 1364. — In general.
- 1365. — Necessity of special allegations or charges.
- 1366. — Time for filing or instituting proceedings.
- 1367. — Requisites and sufficiency of accusation.
- 1368. Objections to accusation in general.
- 1369. Striking, quashing, dismissing.
- 1370. Amendment of charge.
- 1371. Issues, proof and variance.
- 1372. Inquiry of or caution to defendant.
- 1373. Plea or response to charge.
- 1374. Discovery and disclosure.
- 1375. Evidence.
- 1376. — In general.
- 1377. — Presumptions.
- 1378. — Burden of proof.
- 1379. — Admissibility.
 - (1). In general.
 - (2). Existence and eligibility of prior convictions.
 - (3). Identity.
 - (4). Declarations, admissions, and confessions.
 - (5). Other particular matters.
- 1380. — Degree of proof.
 - (1). In general.
 - (2). Existence and eligibility of prior conviction.
 - (3). Identity.
 - (4). Other particular matters.
- 1381. — Sufficiency.
 - (1). In general.
 - (2). Fact of prior conviction or adjudication.
 - (3). Nature or degree of predicate offense.
 - (4). Time and order of convictions or adjudications.

350H. SENTENCING AND PUNISHMENT**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- (5). Eligibility of prior conviction or adjudication.
 - (6). Identity.
 - (7). Other particular issues.
 - 1382. Questions of law or fact.
 - 1383. Hearing or trial.
 - 1384. — In general.
 - 1385. — Necessity.
 - 1386. — Scope of inquiry.
 - 1387. — Conduct.
 - 1388. Instructions.
 - 1389. Verdict or recommendation of jury.
 - 1390. Findings and statement of reasons.
 - 1391. — In general.
 - 1392. — Necessity and purpose.
 - 1393. — Sufficiency.
 - 1394. Sentence imposed.
 - 1395. — In general.
 - 1396. — Form and requisites.
 - 1397. Decision, and order or judgment.
 - 1398. Objections and disposition thereof.
 - 1399. Reconsideration and modification of sentence.
- Substantive matters relating to reconsideration, see*
⌋1426.

(L) PUNISHMENT.

- 1400. In general.
 - 1401. Proportionality and excessiveness in general.
 - 1402. Arson and malicious mischief.
 - 1403. Assault and battery.
 - 1404. Burglary and trespass.
 - 1405. Conspiracy, racketeering, and money laundering.
 - 1406. Counterfeiting and forgery.
 - 1407. Disorderly conduct and breach of the peace.
 - 1408. Drugs and narcotics.
 - 1409. Escape.
 - 1410. Extortion, threats, stalking, and harassment.
 - 1411. False pretenses and fraud.
 - 1412. Gambling offenses.
 - 1413. Homicide, mayhem, and assault with intent to kill.
 - 1414. Infants, offenses specific to.
- Sex offenses, see* ⌋1422.

**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- 1415. Kidnapping and false imprisonment.
 - 1416. Larceny, embezzlement, and receiving stolen property.
 - 1417. Liquor offenses.
 - 1418. Motor vehicle offenses.
- Habitual or repeat traffic offenders, see* *AUTOMOBILES.*
- 1419. Obscenity and lewdness.
 - 1420. Obstructing justice, bribery, perjury.
 - 1421. Robbery.
 - 1422. Sex offenses, incest, and prostitution.
 - 1423. Tax and internal revenue offenses.
 - 1424. Weapons and explosives.
 - 1425. Other particular offenses.
 - 1426. Reconsideration and modification.

**VII. CRUEL AND UNUSUAL PUNISHMENT
IN GENERAL.**

Death penalty, see *VIII, except for the conditions of confinement of prisoners awaiting execution, see* ⌋1552.

(A) IN GENERAL.

- 1430. In general.
 - 1431. Purpose of prohibition.
 - 1432. Application to governmental or private action.
 - 1433. Necessity of criminal conviction.
- Due process restrictions on pretrial detention, see*
CONSTITUTIONAL LAW ⌋4543.
- 1434. Scope of prohibition.
 - 1435. — In general.
 - 1436. — Punishment.
 - 1437. — Intentional conduct.
 - 1438. — Wantonness.
 - 1439. — Cruelty and unnecessary infliction of pain.

(B) LAW ENFORCEMENT ACTIVITIES.

- 1440. In general.
- 1441. Investigative proceedings and surveillance.
- 1442. Arrest and stop.
- 1443. Searches and seizures.
- 1444. Other particular matters.

(C) CRIMINAL LIABILITY.

- 1450. In general.
- 1451. Declaring act criminal.
- 1452. — In general.

350H. SENTENCING AND PUNISHMENT

VII. CRUEL AND UNUSUAL PUNISHMENT
IN GENERAL.(Cont'd)

- 1453. — Particular offenses.
- 1454. Persons subject.
- 1455. Defenses.

(D) PROSECUTIONS.

- 1460. In general.
- 1461. Grand jury and filing of accusatory instrument.
- 1462. Summoning and impaneling trial jury.
- 1463. Conduct of trial.
- 1464. Arguments and conduct of counsel.
- 1465. Instructions.
- 1466. Sentencing proceedings.
Punishment, see VII(E).
- 1467. Appellate review.
- 1468. Post-conviction relief.
- 1469. Habeas corpus proceedings.

(E) EXCESSIVENESS AND PROPORTIONALITY
OF SENTENCE.

- 1480. In general.
- 1481. Length of sentence.
- 1482. Proportionality.
- 1483. Punishment authorized by statute.
- 1484. Arson and malicious mischief.
- 1485. Assault and battery.
Vehicular assault, see ¶1500.
- 1486. Burglary and trespass.
- 1487. Conspiracy, racketeering, and money laundering.
- 1488. Counterfeiting and forgery.
- 1489. Disorderly conduct and breach of the peace.
- 1490. Drugs and narcotics.
- 1491. Escape.
- 1492. Extortion, threats, stalking, and harassment.
- 1493. False pretenses and fraud.
- 1494. Gambling offenses.
- 1495. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see ¶1500.
- 1496. Infants, offenses specific to.
Sex offenses, see ¶1504.
- 1497. Kidnapping and false imprisonment.
- 1498. Larceny, embezzlement, and receiving stolen property.
- 1499. Liquor offenses.
- 1500. Motor vehicle offenses.

VII. CRUEL AND UNUSUAL PUNISHMENT
IN GENERAL.(Cont'd)

- 1501. Obscenity and lewdness.
- 1502. Obstructing justice, bribery, and perjury.
- 1503. Robbery.
- 1504. Sex offenses, incest, and prostitution.
Sex offender registration and notification, see ¶1599.
- 1505. Tax and internal revenue offenses.
- 1506. Weapons and explosives.
- 1507. Other particular offenses.
- 1508. Cumulative or consecutive sentences.
- 1509. Enhanced punishment.
- 1510. — In general.
- 1511. — Firearms enhancements.
- 1512. — Other particular grounds for enhancement.
- 1513. Habitual offenders and career criminals.

(F) METHODS OF PUNISHMENT.

- 1519. In general.
- 1520. Barbarous and inhumane punishment.
- 1521. Cruelty.
- 1522. Torture.
- 1523. Corporal punishment.
- 1524. — In general.
- 1525. — Particular punishments.
- 1526. Hard labor.

(G) CONFINEMENT.

- 1527. In general.
- 1528. Pretrial detention in general.
Due process restrictions, see CONSTITUTIONAL LAW ¶4543.
- 1529. Bail pending trial.
Excessive bail, see BAIL ¶52.
- 1530. Bail pending appeal or other review.
- 1531. Confinement beyond term of sentence.

(H) CONDITIONS OF CONFINEMENT.

- Due process, see also CONSTITUTIONAL LAW ¶4820 et seq. Equal protection, see also CONSTITUTIONAL LAW ¶3822. Maintenance and care of prisoners, see also PRISONS II. Prisoners, redress under civil rights acts, see CIVIL RIGHTS ¶1089–1098, 1420, 1454, and 1485.*
- 1532. In general.
- 1533. Deliberate indifference in general.
- 1534. Management and maintenance of security.
- 1535. Work and labor.

350H. SENTENCING AND PUNISHMENT**VII. CRUEL AND UNUSUAL PUNISHMENT
IN GENERAL.**(Cont'd)

- 1536. Hazardous and unhealthful conditions.
- 1537. Protection from violence.
- 1538. Housing.
- 1539. Sanitation.
- 1540. Food.
- 1541. Recreation and exercise.
- 1542. Education, training and rehabilitation.
- 1543. Libraries, reading material, and censorship.
- 1544. Visitors and communication.
- 1545. Searches and privacy.
See also CONSTITUTIONAL LAW ¶1274, *PRISONS* ¶4(7).
- 1546. Medical care and treatment.
- 1547. Psychological and psychiatric treatment.
- 1548. Use of force.
- 1549. Physical restraints.
- 1550. Prison discipline.
See also PRISONS ¶13.
- 1551. Religious practices and materials.
See also CONSTITUTIONAL LAW ¶1421, *PRISONS* ¶4(14).
- 1552. Prisoners under sentence of death.
- 1553. Segregated or solitary confinement.
- 1554. Other particular conditions.

(I) DEPRIVATION OF PROPERTY.

- 1555. In general.
- 1556. Restitution.
- 1557. — In general.
- 1558. — Proportionality.
- 1559. Fines.
- 1560. — In general.
- 1561. — Proportionality.
- 1562. Forfeitures.
- 1563. — In general.
- 1564. — Proportionality.
- 1565. Penalties.
- 1566. — In general.
- 1567. — Proportionality.
- 1568. Other deprivations.

(J) ALTERNATIVES TO INCARCERATION.

- 1570. In general.
- 1571. Intervention and diversion.
- 1572. Suspension of sentence.
- 1573. Probation.
- 1574. Parole.

**VII. CRUEL AND UNUSUAL PUNISHMENT
IN GENERAL.**(Cont'd)

- 1575. Pardon and clemency.
- 1576. Other particular programs.

(K) CIVIL MATTERS.

- 1580. In general.
- 1581. Civil disabilities arising from criminal conviction.
- 1582. Matters related to aliens.
- 1583. Administrative or non-judicial proceedings.
- 1584. — In general.
- 1585. — Matters related to licenses.
- 1586. Infants.
- 1587. — In general.
- 1588. — Termination of parental rights.
- 1589. Schools and school discipline.
- 1590. Chemical dependency.
- 1591. — In general.
- 1592. — Diagnosis and treatment.
- 1593. Mental health.
- 1594. — In general.
- 1595. — Diagnosis, observation and treatment.
- 1596. — Civil commitment.
Includes treatment of persons civilly committed.
- 1597. — Persons incompetent to stand trial.
- 1598. Confinement after acquittal on ground of mental disorder.
- 1599. Registration of offenders.
Includes community notification.
- 1600. — In general.
- 1601. — Sex offenders.
- 1602. Awards of damages.

(L) JUVENILE JUSTICE.

- 1605. In general.
- 1606. Delinquency.
- 1607. Juvenile offenders.

VIII. THE DEATH PENALTY.

Reconsideration or modification of sentence, see XII. Allocution, see ¶355. *Presence of defendant, see* ¶340.

(A) IN GENERAL.

- 1610. In general.
- 1611. Constitutionality of death penalty.

350H. SENTENCING AND PUNISHMENT

Due process, see also CONSTITUTIONAL LAW
 Ⓒ4741. *Equal protection, see also CONSTITUTIONAL LAW* Ⓒ3811.

- 1612. Death penalty as cruel or unusual punishment.
- 1613. Requirements for imposition.
- 1614. — In general.
- 1615. — Individualized determination.
- 1616. — Avoidance of arbitrariness or capriciousness.
- 1617. — Existence of limit on sentencer's discretion.
- 1618. — Narrowing class of eligible offenders.
- 1619. — Objective standards.
- 1620. Existence and effect of racial or other discriminatory impact.
See also Ⓒ1648.
- 1621. Purpose of statute or regulatory provision.
- 1622. Validity of statute or regulatory provision.
- 1623. — In general.
- 1624. — Provision authorizing death penalty.
- 1625. — Aggravating or mitigating circumstances.
- 1626. — Procedure.
- 1627. — Review.
- 1628. — Other particular provisions.
- 1629. Construction.
- 1630. Time of taking effect.
- 1631. Retroactive operation.
- 1632. — In general.
- 1633. — Effect of amendment or other modification.
- 1634. — Validity of particular retroactive applications.

(B) PERSONS ELIGIBLE.

- 1640. In general.
- 1641. Persons with psychiatric disabilities.
As aggravating or mitigating factor, see Ⓒ1709.
- 1642. Persons with intellectual disabilities.
As aggravating or mitigating factor, see Ⓒ1713.
- 1643. Juveniles.
- 1644. Other particular classes of persons.

(C) FACTORS AFFECTING IMPOSITION IN GENERAL.

- 1645. In general.
- 1646. Sympathy and mercy.

VIII. THE DEATH PENALTY.(Cont'd)

- 1647. Passion or prejudice in general.
- 1648. Matters relating to racial or other prejudice.
Racial or other prejudice as motive for offense, see Ⓒ1672.
- 1649. Exercise of rights.
- 1650. Deterrence.
- 1651. Retribution.
- 1652. Aggravating circumstances in general.
- 1653. Mitigating circumstances in general.
- 1654. Availability of other sentence.
- 1655. Sentence or disposition of co-participant or codefendant.
- 1656. Factors extrinsic to statute or guideline in general.
- 1657. Proportionality in general.
- 1658. Manner and effect of weighing or considering factors.
- 1659. Effect of applying invalid factor.
- 1660. Dual use of evidence or aggravating factor.
- 1661. Determinations based on multiple factors.

(D) FACTORS RELATED TO OFFENSE.

- 1665. In general.
- 1666. Nature or degree of offense.
- 1667. — In general.
- 1668. — Murder.
- 1669. Extent of offender's personal participation.
- 1670. Intent of offender.
- 1671. Motive.
- 1672. Racial or other prejudice as motive.
- 1673. Personal or pecuniary gain.
- 1674. Contract killing.
- 1675. Provocation or participation by victim.
- 1676. Planning, premeditation, and calculation.
- 1677. Compulsion and duress.
- 1678. Extreme or reckless indifference.
- 1679. Endangering or creating risk to others.
- 1680. Offense committed while in custody or legal restraint.
- 1681. Killing while committing other offense or in course of criminal conduct.
- 1682. Escape or other obstruction of justice.
- 1683. More than one killing in same transaction or scheme.

350H. SENTENCING AND PUNISHMENT**VIII. THE DEATH PENALTY.(Cont'd)**

- 1684. Vileness, heinousness, or atrocity.
- 1685. Claim of innocence or residual doubt as to guilt.
- 1686. Other matters related to offense.

(E) FACTORS RELATED TO OFFENDER.

- 1700. In general.
- 1701. Gender.
- 1702. Offender's character in general.
- 1703. Other offenses, charges, misconduct.
- 1704. — In general.
- 1705. — Nature, degree, or seriousness of other offense.
- 1706. — Juvenile record.
- 1707. — Unadjudicated conduct.
- 1708. — Lack of significant prior record.
- 1709. Psychiatric disabilities.
- 1710. Emotional distress or disturbance.
- 1711. Substance abuse and addiction.
- 1712. Intoxication or drug impairment at time of offense.
- 1713. Intellectual disabilities.
- 1714. Age.
- 1715. Physical illness or disability.
- 1716. Childhood or familial background.
- 1717. Existing social ties and responsibilities.
- 1718. Remorse and actual or potential rehabilitation.
- 1719. Assistance to authorities and cooperation.
- 1720. Dangerousness.
- 1721. Other matters related to offender.

(F) FACTORS RELATED TO STATUS OF VICTIM.

- 1725. In general.
- 1726. Vulnerability.
- 1727. Age.
- 1728. Economic and social status.
- 1729. Public official or employee.
- 1730. — In general.
- 1731. — Law enforcement officer.
- 1732. — Correctional officers and prison employees.
- 1733. Witnesses.
- 1734. Victim's family status.
- 1735. Relationship between defendant and victim.

(G) PROCEEDINGS.**1. IN GENERAL.**

- 1736. In general.
- 1737. Counsel.
- 1738. Decision to seek death penalty.
- 1739. — In general.
- 1740. — Authority or discretion of prosecutor.
- 1740.5. Indictments and charging instruments.
- 1741. Notice of intent to seek death penalty.
- 1742. — In general.
- 1743. — Time for giving.
- 1744. Notice of sentencing factors.
- 1745. Notice of evidence and witnesses.
- 1746. Other discovery and disclosure.
- 1747. Failure to give notice or make disclosure.
- 1748. Preliminary objections and disposition thereof.

2. EVIDENCE.

- 1750. In general.
- 1751. Applicability of rules of evidence in general.
- 1752. Discretion of court.
- 1753. Presumptions.
- 1754. Burden of proof.
- 1755. Admissibility.
- 1756. — In general.
- 1757. — Evidence in mitigation in general.
- 1758. — Death penalty.
 - (1). In general.
 - (2). Discriminatory impact.
 - (3). Deterrent effect.
 - (4). Execution of death sentence.
- 1759. — Nature and circumstances of offense.
- 1760. — Defendant's character and conduct.
- 1761. — Defendant's mental condition or capacity.
- 1762. — Other offenses, charges, or misconduct.
- 1763. — Victim impact.
- 1764. — Demonstrative evidence.
- 1765. — Declarations and confessions.
- 1766. — Hearsay.
- 1767. — Documentary evidence.

350H. SENTENCING AND PUNISHMENT**VIII. THE DEATH PENALTY.(Cont'd)**

- 1768. — Opinion evidence.
- 1769. — Expert evidence.
- 1770. — Wrongfully obtained evidence.
- 1771. Degree of proof.
- 1772. Sufficiency.
- 1773. Objections and disposition thereof.

3. HEARING.

Presence of defendant, see II(G). Allocution, see II(G). Reconsideration or modification of sentence, see XII.

- 1774. In general.
- 1775. Discretion of court.
- 1776. Scope of inquiry.
- 1777. Questions of law or fact.
- 1778. Purpose and necessity of bifurcated proceeding.
- 1779. Matters related to jury.
Constitutional right to have jury determine punishment, see JURY §24.
 - (1). In general.
 - (2). Necessity for new jury.
 - (3). Deliberations.
- 1780. Conduct of hearing.
 - (1). In general.
 - (2). Arguments and conduct of counsel.
 - (3). Instructions.
- 1781. Remarks and conduct of judge.
- 1782. Reception of evidence.

4. DETERMINATION AND DISPOSITION.

- 1783. In general.
- 1784. Verdict or recommendation of jury.
 - (1). In general.
 - (2). Effect of recommendation.
 - (3). Overriding jury recommendation.
 - (4). Special issues.
- 1785. Findings and statement of reasons.
 - (1). In general.
 - (2). Necessity and purpose.
 - (3). Sufficiency.
- 1786. Unanimity.
- 1787. Decision, and order or judgment.
- 1788. Review of death sentence.
 - (1). In general.
 - (2). Right of review.
 - (3). Presentation and reservation in lower court of grounds of review.

VIII. THE DEATH PENALTY.(Cont'd)

- (4). Proceedings in general.
- (5). Scope of review.
- (6). Proportionality.
- (7). Presumptions.
- (8). Discretion of lower court.
- (9). Questions of fact.
- (10). Harmless and reversible error.
- (11). Determination and disposition.
- 1789. Review of proceedings to impose death sentence.
 - (1). In general.
 - (2). Right of review.
 - (3). Presentation and reservation in lower court of grounds of review.
 - (4). Proceedings in general.
 - (5). Scope of review.
 - (6). Presumptions.
 - (7). Discretion of lower court.
 - (8). Verdict and findings.
 - (9). Harmless and reversible error.
 - (10). Determination and disposition.
- 1790. Post-conviction relief.

5. MENTAL ILLNESS OR DISORDER.

- 1791. In general.
- 1792. Examination.
- 1793. Evidence.
- 1794. Hearing.

(H) EXECUTION OF SENTENCE OF DEATH.

- 1795. In general.
- 1796. Mode of execution.
- 1797. Proceedings at execution.
- 1798. Stay of execution.
- 1799. Setting new date for execution.

IX. PROBATION AND RELATED DISPOSITIONS.

Includes conditional liberty granted by judicial authority subsequent to conviction, and the revocation thereof. Includes habitual offenders and career criminals. Intervention, diversion, and withheld judgment, see X. Parole and commutation of sentence, see PARDON AND PAROLE. Bail and recognizance, see BAIL.

(A) IN GENERAL.

- 1800. In general.
- 1801. Authority to impose.
- 1802. Discretion of court.

350H. SENTENCING AND PUNISHMENT**IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)**

- 1803. Suspension of sentence.
- 1804. — In general.
- 1805. — Suspending imposition of sentence.
- 1806. — Suspending execution of sentence.
Stay of execution of sentence, see II(J).
- 1807. — Partial suspension.
- 1808. — Indefinite suspension.
- 1809. — Effect of suspension.
- 1810. — Necessity that probation be granted.
- 1811. Nature and purpose of probation.
- 1812. Probation as right or privilege.
- 1813. Probation distinguished from similar dispositions.
- 1814. — In general.
- 1815. — Suspended sentence.
- 1816. — Intervention or diversion.
- 1817. — Community control.
- 1818. — Home confinement.
- 1819. — Parole.
- 1820. — Supervised release.
- 1821. Right to refuse probation or related disposition.
- 1822. Constitutional, statutory, and regulatory provisions.
- 1823. — In general.
- 1824. — Purpose.
- 1825. — Validity.
- 1826. — Repeal.
- 1827. — Construction.
- 1828. — Retroactive operation.

(B) GROUNDS AND CONSIDERATIONS IN GENERAL.

- 1830. In general.
- 1831. Interests of society or community.
- 1832. Protection and deterrence.
- 1833. Rehabilitation and reformation of offender.
- 1834. Other particular considerations.

(C) FACTORS RELATED TO OFFENSE.

- 1835. In general.
- 1836. Circumstances of offense in general.
- 1837. Actual or potential penalty in general.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1838. Nature, grade or seriousness of offense in general.
 - 1839. Violent or nonviolent offenses in general.
 - 1840. Armed conduct or use of weapon in general.
 - 1841. Especially heinous, shocking or depraved offense.
 - 1842. Arson and malicious mischief.
 - 1843. Assault and battery.
Vehicular assault, see 1858.
 - 1844. Burglary and trespass.
 - 1845. Conspiracy, racketeering, and money laundering.
 - 1846. Counterfeiting and forgery.
 - 1847. Disorderly conduct and breach of the peace.
 - 1848. Drugs and narcotics.
 - 1849. Escape.
 - 1850. Extortion, threats, stalking, and harassment.
 - 1851. False pretenses and fraud.
 - 1852. Gambling offenses.
 - 1853. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see 1858.
 - 1854. Infants, offenses specific to.
Sex offenses, see 1862.
 - 1855. Kidnapping and false imprisonment.
 - 1856. Larceny, embezzlement, and receiving stolen property.
 - 1857. Liquor offenses.
 - 1858. Motor vehicle offenses.
 - 1859. Obscenity and lewdness.
 - 1860. Obstructing justice, bribery, and perjury.
 - 1861. Robbery.
 - 1862. Sex offenses, incest, and prostitution.
 - 1863. Tax and internal revenue offenses.
 - 1864. Weapons and explosives.
 - 1865. Other particular offenses.
- (D) FACTORS RELATED TO OFFENDER.**
- 1870. In general.
 - 1871. Lack of significant prior record; first offenders.
 - 1872. Other arrests, charges or convictions.
(1). In general.

350H. SENTENCING AND PUNISHMENT

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- (2). Seriousness or degree of other charge.
- (3). Particular charges or convictions.
- 1873. Habitual offenders and career criminals.
- 1874. Juvenile record.
- 1875. Age of offender.
- 1876. Physical condition of offender.
- 1877. Psychiatric disabilities.
- 1878. Substance abuse or addiction.
- 1879. Remorse.
- 1880. Restitution or reparation.
- 1881. Cooperation or assistance.
- 1882. Failure to cooperate.
- 1883. Exercise of rights.
- 1884. Perjury or other untruthfulness.
- 1885. Likelihood of rehabilitation or reoffending.
- 1886. Opinions and recommendations of officials and others.
- 1887. Plea bargain or other agreement.
- 1888. Other particular offender-related factors.

(E) PROCEEDINGS FOR IMPOSITION.

- 1890. In general.
- 1891. Petition or application.
- 1892. Time when probation may be granted.
- 1893. — In general.
- 1894. — Effect of commencement of sentence.
- 1895. Counsel.
- 1896. Evidence.
- 1897. — In general.
- 1898. — Presumptions.
- 1899. — Burden of proof.
- 1900. — Admissibility.
- 1901. — Degree of proof.
- 1902. — Sufficiency.
- 1903. Questions of law or fact.
- 1904. Hearing or trial.
- 1905. — In general.
- 1906. — Necessity.
- 1907. — Conduct of hearing.
- 1908. Findings.
- 1909. — In general.
- 1910. — Necessity and purpose.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1911. — Sufficiency.
- 1912. Decision or order.
- 1913. — In general.
- 1914. — Operation and effect.
- 1915. Imposition of conditions and obligations.
Substantive lawfulness of conditions, see IX(G).
- 1916. — In general.
- 1917. — Notice.
- 1918. — Announcement of and advice as to conditions.
- 1919. — Necessity of writing.
- 1920. — Failure to properly announce or memorialize.
- 1921. Conflict in record.
- 1922. Objections and exceptions.
- 1923. Reconsideration or modification.

(F) DISPOSITION OF OFFENDER.

- 1930. In general.
- 1931. Probation without sentence.
- 1932. Probation without suspension of sentence.
- 1933. Confinement and probation.
Confinement as condition of probation, see ¶1976.
- 1934. — In general.
- 1935. — Concurrent service.
- 1936. — Probation after confinement.
- 1937. — Different offenses or convictions.
- 1938. Consecutive or concurrent probationary terms.
- 1939. Commencement of probation.
- 1940. — In general.
- 1941. — Commencement after confinement.
- 1942. Duration.
- 1943. — In general.
- 1944. — Indefinite duration.
- 1945. — Relation to potential or actual term of confinement.
- 1946. — Effect of statute or guideline.
- 1947. — Interruption and tolling.
- 1948. Expiration of term.
- 1949. Modification of term.
- 1950. — In general.
- 1951. — Grounds.
- 1952. — Extent of modification.
- 1953. Discharge of probationer.

350H. SENTENCING AND PUNISHMENT**(G) CONDITIONS OF PROBATION.***Duration of probation, see IX(F).*

- 1960. In general.
- 1961. Status of probationer in general.
- 1962. Discretion of court.
- 1963. Validity or reasonableness of conditions in general.
- 1964. Particular terms and conditions.
- 1965. — In general.
- 1966. — Good behavior; conformity to law.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1967. — Geographic or travel restrictions.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1968. — Banishment or deportation.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1969. — Reporting to and cooperation with law enforcement.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1970. — Waiver of constitutional rights.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1971. — Residence, association, and communication.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1972. — Employment and livelihood.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1973. — Restitution and reparations.
 - (1). In general.
 - (2). Validity.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- (3). Construction, operation, and compliance.
- 1974. — Payment of fine.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1975. — Payment of costs.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1976. — Imprisonment and confinement.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1977. — Rehabilitation and therapy.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1978. — Medical procedures and treatment.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1979. — Matters related to vehicles.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1980. — Intoxicants and controlled substances.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1981. — Matters related to weapons.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1982. — Community service.
 - (1). In general.
 - (2). Validity.

350H. SENTENCING AND PUNISHMENT**IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)**

- (3). Construction, operation, and compliance.
- 1983. — Other particular conditions.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1984. Modification of terms and conditions.
Procedure in connection with modification, see
⊞1923.
- 1985. — In general.
- 1986. — Grounds and considerations.
- 1987. — Particular cases.
- 1988. Supervision.

(H) SEARCHES AND SEIZURES.

- 1990. In general.
- 1991. Constitutional restrictions.
- 1992. — In general.
- 1993. — Necessity for warrant.
- 1994. — Matters relating to consent.
- 1995. Particular cases.
- 1996. Tests, samples, and specimens.

(I) REVOCATION.**1. IN GENERAL.**

- 2000. In general.
- 2001. Discretion of court.

2. FACTORS AFFECTING REVOCATION.

- 2002. In general.
- 2003. Violation of probation condition.
- 2004. New offense.
- 2005. Other particular factors.
- 2006. Defenses and objections.

3. PROCEEDINGS.

- 2009. In general.
- 2010. Time for proceedings.
- 2011. Complaint or petition.
- 2012. Arrest or apprehension of probationer.
- 2013. Notice and disclosure.
- 2014. Assistance of counsel.
- 2015. Evidence.
- 2016. — In general.
- 2017. — Presumptions.
- 2018. — Burden of proof.
- 2019. — Admissibility.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 2020. — Degree of proof.
- 2021. — Sufficiency.
- 2022. Questions of law or fact.
- 2023. Hearing.
- 2024. — In general.
- 2025. — Time for hearing.
- 2026. — Conduct of hearing.
- 2027. Findings of fact and conclusions of law.
- 2028. — In general.
- 2029. — Necessity and purpose.
- 2030. — Sufficiency.
- 2031. Reconsideration or rehearing.

4. DISPOSITION OF OFFENDER.

- 2032. In general.
- 2033. Matters considered.
- 2034. Enforcement of previously imposed sentence.
- 2035. Imposition of new sentence.
- 2036. Imposition of increased sentence.
- 2037. Sentence that could originally have been imposed.
- 2038. Sentence within statutory or other limitation for offense of conviction.
- 2039. Reimposition or reinstatement of probation.
- 2040. Conditions imposed.
- 2041. Credits and computation thereof.

X. ALTERNATIVE DISPOSITIONS.

Includes pretrial diversion and intervention. Includes withholding or deferring judgment after trial or finding of guilt. Probation and suspension of sentence, see IX. Bail and recognizance, see BAIL. Parole, see PARDON AND PAROLE. Commitment for treatment of addiction, see CHEMICAL DEPENDENTS. Commitment for treatment of mental disorders, see MENTAL HEALTH.

(A) IN GENERAL.

- 2045. In general.
- 2046. Banishment and deportation.
- 2047. Home confinement or detention.
- 2048. Employment and holding public office.
Ineligibility necessarily arising from criminal conviction, see PUBLIC EMPLOYMENT ⊞129 and other particular topics.
- 2049. Community service.
- 2050. Intervention, diversion, and similar dispositions.
- 2051. — In general.

350H. SENTENCING AND PUNISHMENT**X. ALTERNATIVE DISPOSITIONS.**(Cont'd)

- 2052. — Authority to grant in general.
- 2053. — Role of prosecutor or other officer.
- 2054. — Role of court.
- 2055. Purpose of statute or regulatory provision.
- 2056. Validity of statute or regulatory provision.
- 2057. Retroactive operation.

(B) MATTERS AFFECTING ELIGIBILITY.

- 2058. In general.
- 2059. Actual or potential rehabilitation.
- 2060. Nature, degree, and seriousness of offense.
- 2061. — In general.
- 2062. — Domestic violence.
- 2063. — Drugs and narcotics.
- 2064. — Motor vehicle offenses.
- 2065. — Other particular offenses.
- 2066. Other offenses, charges, or misconduct.
- 2067. Other particular matters.
- 2068. Agreement.

(C) PROCEEDINGS.

- 2070. In general.
 - 2071. Time.
 - 2072. Application or motion, and response.
 - 2073. Advice and warnings.
 - 2074. Discovery and disclosure.
 - 2075. Evidence.
 - 2076. Necessity for hearing.
 - 2077. Conduct of hearing.
 - 2078. Findings and statement of reasons.
 - 2079. Effect of disposition.
- Expungement of criminal records, see CRIMINAL LAW §1226.*

(D) TERMS AND CONDITIONS.

- 2082. In general.
- 2083. Validity.
- 2084. Construction, operation, and compliance.
- 2085. Modification.

(E) TERMINATION.

- 2086. In general.
- 2087. Grounds.
- 2088. Proceedings.

X. ALTERNATIVE DISPOSITIONS.(Cont'd)

- 2089. — In general.
 - 2090. — Time.
 - 2091. — Application or motion, and response.
 - 2092. Evidence.
 - 2093. Hearing.
 - 2094. Effect of termination.
- Expungement of criminal records, see CRIMINAL LAW §1226.*

(F) DISCHARGE.

- 2095. In general.
- 2096. Satisfactory completion.

XI. RESTITUTION.

Payments into funds for crime victims, see COSTS. Restitution as condition of probation, see §1973. Restitution as condition of intervention or diversion, see X(D). Fines, see FINES and particular offenses.

(A) IN GENERAL.

- 2100. In general.
- 2101. Nature and purpose.
- 2102. Power to award.
- 2103. Discretion of court.
- 2104. Constitutional, statutory, and regulatory provisions.
- 2105. — In general.
- 2106. — Purpose.
- 2107. — Validity.
- 2108. — Repeal.
- 2109. — Construction.
- 2110. — Retroactive operation.

(B) PERSONS ENTITLED TO RESTITUTION.

- 2120. In general.
- 2121. Victims.
- 2122. Governmental entities.
- 2123. Insurers.
- 2124. Family of victim.
- 2125. Other third parties.

(C) FACTORS RELATED TO OFFENDER.

- 2130. In general.
- 2131. Necessity of conviction.
- 2132. Necessity that sentence be suspended.
- 2133. Offender's ability to pay.
- 2134. — In general.
- 2135. — Indigency.
- 2136. — Earning capacity.

350H. SENTENCING AND PUNISHMENT**XI. RESTITUTION.(Cont'd)**

- 2137. Other offender-related factors.
- 2138. Effect of plea bargain or other agreement.

(D) COMPENSABLE LOSSES.

- 2141. In general.
- 2142. Cause of loss in general.
- 2143. Nexus to offense of conviction.
- 2144. Several charges or counts.
- 2145. Other misconduct of offender.
- 2146. Scheme, pattern, or conspiracy.
- 2147. Extent of offender's personal participation.
- 2148. Monetary, pecuniary, or economic loss.
- 2149. Mental and emotional distress and suffering.
- 2150. Medical expenses.
- 2151. Psychological and psychiatric care and treatment.
- 2152. Funeral expenses.
- 2153. Litigation expenses.
- 2154. Other particular matters.
- 2155. Mitigation.
- 2156. Speculative, uncertain, or unascertainable losses.
- 2157. Recovery or reimbursement as bar.
- 2158. — In general.
- 2159. — Payment by insurer.
See also Ⓒ2177.

(E) AMOUNT.

- 2160. In general.
- 2161. Discretion of court.
- 2162. Considerations in fixing amount.
- 2163. — In general.
- 2164. — Factors related to offense.
- 2165. — Factors related to offender.
- 2166. — Factors related to victim.
- 2167. — Actual loss.
- 2168. — Other particular factors.
- 2169. Valuation of loss or injury.
- 2170. — In general.
- 2171. — Time for valuation.
- 2172. — Measure of valuation.
- 2173. Interest.
Rate of interest and computation of interest, see INTEREST.
- 2174. Credits and offsets.
- 2175. — In general.

XI. RESTITUTION.(Cont'd)

- 2176. — Reimbursement.
- 2177. — Payment by insurer.
- 2178. Other particular amount-related matters.
- 2179. Effect of plea bargain or other agreement.

(F) PROCEEDINGS.

- 2180. In general.
- 2181. Notice.
- 2182. Evidence.
- 2183. — In general.
- 2184. — Presumptions.
- 2185. — Burden of proof.
- 2186. — Admissibility.
- 2187. — Degree of proof.
- 2188. — Sufficiency.
 - (1). In general.
 - (2). Loss or injury.
 - (3). Ability to pay.
 - (4). Amount, value.
 - (5). Other particular matters.
- 2189. Questions of law or fact.
- 2190. Hearing.
- 2191. — In general.
- 2192. — Necessity for hearing.
- 2193. — Time for hearing.
- 2194. — Conduct of hearing.
- 2195. Findings and statement of reasons.
- 2196. Order.
Payment plan or schedule, see Ⓒ2206.
- 2197. — In general.
- 2198. — Form and contents.
- 2199. — Definiteness and certainty.
- 2200. — Construction and operation.
- 2201. Objections and disposition thereof.

(G) PAYMENT.

- 2205. In general.
- 2206. Payment plan or schedule.
- 2207. Mode of payment.
- 2208. Payment by transfer of goods or specific articles.
- 2209. Time for payment.
- 2210. Disposition of proceeds.
- 2211. Recovery of payment made.
- 2212. Enforcement.
- 2213. — In general.

350H. SENTENCING AND PUNISHMENT**XI. RESTITUTION.**(Cont'd)

- 2214. — Who may enforce.
- 2215. — Time for enforcing.
- 2216. — Proceedings to enforce.
- 2217. — Mode of enforcement.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.

Includes reconsideration, modification and correction of sentence by the sentencing court or by an authorized board, commission, or tribunal. Proceedings for relief from conviction or to vacate or set aside judgment of conviction, see CRIMINAL LAW. Amendment or correction of judgment, see CRIMINAL LAW. Proceedings for habeas corpus relief, see HABEAS CORPUS. Motion for new trial, see CRIMINAL LAW. Habitual offenders and career criminals, see ¶1399, 1426. Reconsideration and modification of sentence imposing probation, see IX. Presentence report, see ¶291.

(A) IN GENERAL.

- 2220. In general.
- 2221. Scope and purpose of remedy.
- 2222. Existence of other remedies.
- 2223. Waiver and estoppel.
- 2224. Sentences subject to reconsideration.
- 2225. — In general.
- 2226. — Severity or length of sentence.
- 2227. — Death sentence.
- 2228. Authority to reconsider or modify sentence.
- 2229. — In general.
- 2230. — Court that imposed sentence.
- 2231. — Specially designated court, panel or board.
- 2232. Discretion of court.
- 2233. Constitutional, statutory, and other regulatory provisions.
- 2234. — In general.
- 2235. — Purpose.
- 2236. — Validity.
- 2237. — Amendment.
- 2238. — Repeal.
- 2239. — Construction.
- 2240. — Time of taking effect.
- 2241. — Retroactive operation.

(B) GROUNDS AND CONSIDERATIONS.

- 2250. In general.
- 2251. Irregularity or error in sentencing proceedings.
- 2252. Technical, formal or arithmetical error.
- 2253. Conflict in record.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.(Cont'd)

- 2254. Illegal sentence.
- 2255. Punishment unauthorized by statute or guideline.
- 2256. Excessive punishment.
- 2257. Unlawfully lenient disposition.
- 2258. Fraud.
- 2259. Matters arising after sentencing.
- 2260. — In general.
- 2261. — New information.
- 2262. — Change in law.
- 2263. — Change in facts.
- 2264. Matters related to plea.
- 2265. Death sentence.

(C) PROCEEDINGS.**1. IN GENERAL.**

- 2270. In general.
- 2271. Jurisdiction.
- 2272. Persons entitled to seek relief.
- 2273. Counsel.
- 2274. Motion or application.
- 2275. — In general.
- 2276. — Necessity.
- 2277. — Sufficiency.
- 2278. Time.
- 2279. — In general.
- 2280. — Time for motion or application.
- 2281. — Term of court.
- 2282. — Execution or service of sentence.
- 2283. — Time for ruling or determination.
- 2284. — Computation.
- 2285. — Effect of delay.

2. EVIDENCE.

- 2286. In general.
- 2287. Applicability of rules of evidence in general.
- 2288. Discretion of court.
- 2289. Presumptions.
- 2290. Burden of proof.
- 2291. Admissibility.
- 2292. — In general.
- 2293. — Irregularity in sentencing proceedings.
- 2294. — Error in punishment imposed.
- 2295. — New information.
- 2296. — Matters related to plea.

351. SEQUESTRATION**XII. RECONSIDERATION AND MODIFICATION
OF SENTENCE.**(Cont'd)

- 2297. — Change in facts.
- 2298. — Competency.
 - (1). In general.
 - (2). Record and papers in underlying proceeding.
 - (3). Demonstrative evidence.
 - (4). Declarations.
 - (5). Hearsay.
 - (6). Documentary evidence.
 - (7). Opinion evidence.
 - (8). Expert evidence.
- 2299. Degree of proof.
- 2300. Sufficiency.
- 2301. Objections and disposition thereof.

3. HEARING AND DETERMINATION.

- 2302. In general.
- 2303. Questions of law or fact.
- 2304. Discretion of court.
- 2305. Necessity for hearing.
- 2306. Time for hearing.
- 2307. Presence of defendant.
- 2308. Allocution.
- 2309. Conduct of hearing.
- 2310. Findings and statement of reasons.
- 2311. — In general.
- 2312. — Necessity and purpose.
- 2313. — Sufficiency.
- 2314. Decision or order.
- 2315. — In general.
- 2316. — Operation and effect.
- 2317. Successive proceedings.
- 2318. Objections and disposition thereof.

(D) DISPOSITION.

- 2325. In general.
- 2326. Resolution of conflict in record.
- 2327. Correction of sentence.
- 2328. Reduction of sentence.
- 2329. Imposition of new sentence.
- 2330. Imposition of increased sentence.
- 2331. — In general.
- 2332. — What constitutes increase.
- 2333. Consecutive and concurrent sentences.
- 2334. Credits.
- 2335. Other dispositions.

351. SEQUESTRATION**SUBJECTS INCLUDED**

Taking and keeping in legal custody specific property as subject to conflicting claims of ownership, or to liens or other special rights, to preserve it during litigation; or so taking and disposing of property of defendants in civil actions, to compel them to appear and answer or perform any other act therein, or to preserve the property, or to enforce performance of the judgment

Nature and scope of the remedy in general

In what cases and for what purposes and as to what property it is allowed

Grounds of sequestration, and jurisdiction over and proceedings to obtain sequestration

Issuance, requisites and validity of writs and other mandates of sequestration

Appointment and qualification of sequestrators, and effect thereof

Rights, powers, duties, and liabilities of sequestrators, and proceedings by them

Dissolution of writs, etc., and discharge, etc., of sequestrators

Liabilities on and enforcement of securities given to obtain, dissolve, etc., sequestrations

Liabilities for wrongful procuring of sequestration

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Attachment of property in general, see CREDITORS' REMEDIES

Other remedies, sequestration merely incident to, see DIVORCE and other specific topics

Particular forms of relief, sequestration in actions for, see CORPORATIONS AND BUSINESS ORGANIZATIONS, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Receiverships, see RECEIVERS

- 1. Nature and scope of remedy.
- 2. Statutory provisions.
- 3. Grounds and purposes.
- 4. — In general.
- 5. — Preservation of property in controversy or subject to liens or rights.

351. SEQUESTRATION

6. — Enforcing appearance or other proceeding.
7. — Enforcing performance of judgment or decree.
8. Defenses and grounds of opposition.
9. Persons entitled to sequestration.
10. Property which may be subject of sequestration.
11. Jurisdiction and authority to grant.
12. Proceedings to procure.
13. Writ, order, or other mandate.
14. Sequestrators.
15. Seizure, custody, and disposition of property.
16. Proceedings to support or enforce.
17. Dissolution or discharge.
18. Claims by third persons.
19. Return of writ.
20. Liabilities on bonds.
21. Wrongful sequestration.

352. SET-OFF AND COUNTERCLAIM**SUBJECTS INCLUDED**

Cross-demands and claims as grounds of defense to actions or of cross-actions

What debts or damages constitute grounds thereof, whether liquidated or unliquidated, and whether connected with or independent of the principal cause of action

Between what parties and in what actions such cross-demands and claims are available

Their operation and effect by way of recoupment or other reduction of the demand or claim sued on, or to counterbalance a recovery thereon, or as ground for affirmative relief

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Compulsory counterclaims—

In federal courts, see **FEDERAL CIVIL PROCEDURE**

Judgment, effect on conclusiveness of, see **RES JUDICATA**

Equity, cross-bills in, see **EQUITY**

Judgments on counterclaims, see **JUDGMENT**

Particular transactions or forms of demand or liability, rights peculiar to, see **COMMERCIAL PAPER, INTEREST, COSTS, JUDGMENT**, and other specific topics

Pleading set-offs, counterclaims, etc., and replies to counterclaims, see **PLEADING**

Proceedings other than actions, set-off in, see **BANKRUPTCY, CREDITORS' REMEDIES**, and other specific topics

I. NATURE AND GROUNDS OF REMEDY, ¶1–21.

II. SUBJECT-MATTER, ¶22–54.

III. OPERATION AND EFFECT, ¶55–61.

I. NATURE AND GROUNDS OF REMEDY.

1. Nature and purpose in general.
2. What law governs.
3. Statutory provisions.
4. Grounds and scope of remedy.
5. — In general.
6. — Recoupment or reconvention.
7. — Statutory set-off.
8. — Equitable set-off.
 - (1). In general.
 - (2). Insolvency and nonresidence.
9. — Counterclaim.
10. — Cross-action.
11. Existence of cause of action of plaintiff.
12. Actions in which remedy is available.
13. — In general.
14. — On contracts.
15. — For torts.
16. — On demands not liquidated.
18. Set-off or counterclaim against set-off or counterclaim.
19. Courts in which remedy is available.
20. Agreements to allow set-off.
21. Estoppel, waiver, or relinquishment.

II. SUBJECT-MATTER.

22. Nature of indebtedness or liability in general.
 - (1). In general.
 - (2). Damages arising from torts.
23. Tendency to diminish or defeat plaintiff's recovery.
24. Subsisting right of action of defendant.

352H. SEX OFFENSES**II. SUBJECT-MATTER.**(Cont'd)

- 25. Claims arising out of same contract or transaction or connected with subject of action.
- 26. — In general.
- 27. — Recoupment or reconvention.
 - (1). In general.
 - (2). Recoupment for plaintiff's breach or nonperformance of contract sued on.
- 28. — Set-off.
 - (1). In general.
 - (2). Set-off for plaintiff's breach of contract sued on.
- 29. — Counterclaim.
 - (1). In general.
 - (2). Actions and counterclaims relating to specific property.
 - (3). In actions for torts.
- 30. Causes of action on other and distinct contracts or transactions.
- 31. — In general.
- 32. — Recoupment.
- 33. — Set-off.
 - (1). In general.
 - (2). Equitable set-off.
- 34. — Counterclaim.
 - (1). In general.
 - (2). Torts in general.
 - (3). Distinct torts.
- 35. Demands not liquidated.
 - (1). In general.
 - (2). Demands disconnected with cause of action sued on.
- 36. Demands not matured.
- 37. Contingent claims.
- 38. Secured claims.
- 39. Claims on which action is pending.
- 40. Claims arising after commencement of action.
- 41. Parties to and mutuality of cross-demands in general.
- 42. Demands of one or more codefendants as to whom separate judgment may be had.
- 42.5. Demands against codefendants.
- 43. Joint and separate claims and liabilities.
- 44. — In general.
 - (1). In general.
 - (2). Partnership and individual demands.

II. SUBJECT-MATTER.(Cont'd)

- 45. — Survivorship.
- 46. Claims and liabilities in different rights and capacities in general.
 - (1). In general.
 - (2). Executors and administrators.
- 47. Claims and liabilities of nominal parties and real parties in interest.
- 48. Set-offs and counterclaims against assigned causes of action.
- 49. — In general.
 - (1). In general.
 - (2). Necessity of notice of assignment.
 - (3). Causes of action on other and distinct contracts or transactions.
 - (4). Set-off against intermediate assignee.
- 50. — Demands arising or maturing after assignment or notice thereof.
- 51. Assigned claims as set-offs and counterclaims.
- 52. — In general.
 - (1). In general.
 - (2). Assigned claim as set-off against assigned cause of action.
- 53. — Demands arising or acquired after commencement of action.
- 54. Waiver of objections.

III. OPERATION AND EFFECT.

- 55. Compensation between cross-demands in general.
- 56. Admission of plaintiff's cause of action.
- 57. Reduction of plaintiff's recovery.
- 58. Extinguishment of plaintiff's cause of action.
- 59. Right to judgment for excess over plaintiff's cause of action.
- 60. Effect of failure to assert or claim; compulsory counterclaim.
- 61. Withdrawal and effect thereof.

352H. SEX OFFENSES**SUBJECTS INCLUDED**

Rape and sexual assault; more particularly—